



COSTLY MOVES

REPORT NO. 3 OF 2012/13

A provisional report of the Public Protector
on an investigation into allegations
of a breach of the Executive Ethics Code by the
Minister of Agriculture, Forestry and Fisheries,
Ms Tina Joemat-Pettersson, MP

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EXECUTIVE SUMMARY

- (i) **COSTLY MOVES** is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, section 3(2)(a) of the Executive Members' Ethics Act, 1998 (the Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994.
- (ii) It is the culmination of a complaint lodged in terms of Section 4(1) of the Executive Members Ethics Act by a Member of Parliament, Dr L Bosman, MP of the Democratic Alliance.
- (iii) In his complaint, Dr Bosman alleged that the Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson, acted in violation of paragraph 2 of the Executive Ethics Code and Section 96(2)(b) of the Constitution by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of official residences in Pretoria and Cape Town to her.
- (iv) The specific allegations made by Dr Bosman against Minister Joemat-Pettersson were that:

“The Minister claims that she has spent so much money on hotels because she did not have an official ministerial residence when she took office in May 2009. Thus, for the first 9 months of her tenure, until the end of February 2010, she stayed at 4–and 5–Star hotels virtually every night. The total cost of her hotel stays during these 9 months was R900 795, or R100 000 per month, or R3 336 per day.

This is reckless use of public funds. The Minister had many cheaper options, such as renting houses for long-term stays in Pretoria and Cape Town, or insisting on cheaper 3-Star hotel accommodation whenever she travelled.

But instead, for instance, she stayed at the 5-Star Peermont D' Oreale Grande Emperors Palace in Johannesburg from 16 September 2009 to 21 October 2009 (35 days), spending R289 352 for the privilege. That equals R8 267 per night. Later, from 13 June 2010 to 11 July 2010 (28 days), she spent R420 000 at a Johannesburg establishment—which is strangely listed as Pure One Toys CC. (sic) That equals R15 000 per night.”

I believe that the Minister's insistence on staying at luxurious hotels both before and after she moved into her official ministerial residence –constitutes a breach of paragraph 2.3 of the Executive Ethics Code and Section 96 (2) of the Constitution.

My understanding of this comes from the precedent you set in your report on former Minister Sicelo Shiceka's conduct in which you stated: "By staying in one of the most expensive hotels during his official visits to Cape Town, repeatedly, before and after an official residence was allocated to him, and without requesting his Private Office to take steps to ensure that the expenditure incurred by the Department is reasonable and justifiable in terms of his responsibility to act in good faith and with integrity, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2) of the Constitution."

According to paragraph 2.3 of Executive Ethics Code, a Minister must "all times to act in good faith and in the best interest of good governance." I believe that the Minister of Agriculture, Forestry and Fisheries has failed to act in good faith by repeatedly staying at 5-Star hotels, often for great lengths of time, and at great expense. She has done this both prior to and after receiving her ministerial residence.

According to section 96(2) of the Constitution, "Members of the Cabinet and Deputy Ministers may not act in a way that is inconsistent with their office." I believe that the Minister has acted inconsistently with the financial prudence required of her position, especially regarding matters of expenditure on personal comfort. The Minister claims that her high level of hotel expenditure can be explained by a lack of ministerial residence, but she could have rented houses in Pretoria and Cape Town – for, say, R15 000 per month each – while her ministerial residences were being procured. That would have cost only R300 000 for those first nine months, not the R900 000 she incurred.

Moreover, the Minister has stayed in Pretoria hotels even after receiving her official residence in the capital. She has also continued to enjoy 5–Star hotels across the country. And she has double–and triple booked hotels on literally dozens of occasions, as revealed in her parliamentary reply which I have attached to this correspondence.

Your office has the necessary powers and mandate to investigate this matter. I believe this breach of law is a serious offence that must be investigated and resolved, as your office has done in the past.”

- (v) On 18 November 2011, the Public Protector received a further complaint from Dr Bosman in connection with Minister Joemat-Pettersson’s visit to Sweden in December 2009 to the effect that, she undertook a pretext official trip at state expense, which in fact was a holiday aimed at visiting her family with her children, around Christmas time in 2009. Dr Bosman’s specific allegations in this regard were that:

“The Minister of Agriculture, Forestry and Fisheries revealed in a reply to a DA parliamentary question (No. 3027 – signed by the Minister on 30 November 2010), that she had gone overseas multiple times in her capacity as Minister since taking office in May 2009. This included a trip to Sweden from 20-22 December 2009, which cost R58,743.

In the reply, she described the trip as a ‘working visit to get counterparts and discuss possible investment opportunities.’ However, this particular trip appears suspicious for four reasons:

First, according to the Parliamentary register of members’ interests, the Minister owns a flat and summer house in Sweden. She also has family there. (They are related to her through her late husband, Thorvald Pettersson.) We wonder if she took her children with her on the trip. If so, did the state pay for them?

Second, unlike every other trip she took, where the Minister attended an official conference or met with a contactable individual, she offers no details about where she went or whom she met in Sweden. This is highly irregular.

Third, she went a few days before Christmas which is strange timing for a business trip, considering that government business winds down at this time of year.

Fourth, in her department’s 2009/10 Annual Report the Minister provides a list of international trips she took in her capacity as Minister, but it does not mention this trip to Sweden.

We strongly suspect that Minister Joemat-Pettersson has also travelled to Sweden under false pretenses and at state expense, violating the Executive Ethics Code. We wonder if this was not a family vacation, taken close to Christmas-time. Considering that she has never made any public statements on the outcomes of this trip, it is hard not to reach such a conclusion.”

- (vi) During the course of the investigation information surfaced which required an investigation into whether Minister Joemat-Pettersson caused her Department to incur expenditure related to double bookings at expensive hotels resulting in fruitless and wasteful expenditure, amounting to R64 882.55.
- (vii) In compliance with Section 3(3) of the Executive Members’ Ethics Act, 1998 the Public Protector informed President Jacob Zuma on 11 January 2012 that it was not possible to conclude the investigation of the complaint within 30 days, as is required by the Act, and that her report would be submitted to him as soon as the investigation was completed.
- (viii) The investigation of the Public Protector that forms the basis of this report was conducted over a period of 9 months and included interviews and of current and former officials of the Department, the Ministry of Agriculture Forestry and Fisheries, its former and current Chief of Staff, South African Embassy in Sweden, management of hotels and guest houses that accommodated Minister Joemat-Pettersson including the 28 A On Oxford guest house and the , Peermont D’ Oreale Grande Hotel and officials of Travel with Flair, the Department’s authorized travel agency.
- (ix) On analysis of the complaint, the issues investigated by the Public Protector were the following:
 - (a) Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?

- (b) Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?
- (c) Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?
- (d) Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?
- (e) Did the Department of Agriculture Forestry and Fisheries (the Department), particularly the Chief of Staff in the Minister's private office, fail to meet the requirements of the Public Finance Management Act, 1999 (PFMA) regarding prudent management of public finances in the manner in which hotel and travel accommodation for the Minister was handled?
- (x) The Public Protector issued a Provisional Report on the investigation on 28 September 2012 and Dr Bosman, Minister Joemat-Pettersson, Ms B Bopape (the former Chief of Staff in the Ministry) and the Acting Director-General of the Department were afforded opportunity to respond to the contents thereof. Comprehensive responses were received and, where applicable, considered and incorporated into the final report.
- (xi) The findings of the Public Protector are that:
- (a) **Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?**
- (aa) Minister Joemat-Pettersson did stay at the *28A On Oxford* Guest House from 13 June 2010 to 11 July 2010 at a total cost to the Department of R420 000. This was during the period when South Africa hosted the FIFA 2010 Soccer World Cup and accommodation costs were inflated. She also stayed at *Peermont D'Oreale Grande Hotel* at a cost to the Department of R8085 per night. Both amounts involved were unconscionably excessive.

- (bb) The Minister's justification of the costs. i.e. that she needed extra room for her family is reasonable as she was entitled to family sized accommodation considering the length of time she spent in hotels and guest houses, due to inconceivable tardiness of the Department of Public Works.
- (cc) However, Minister Joemat-Pettersson's defence of ignorance of the costs involved, though accepted, is a cause for serious concern as she displayed a blank cheque attitude towards public funds. Her failure to concern herself with the prudent use of public funds in connection with her accommodation expenses in the said two instances failed to meet the requirements of paragraph 2 the Executive Ethics Code read with Section 96(2) of the Constitution, which required of her to act in good faith, with integrity and in the best interest of good governance. Therefore, the conclusion that her conduct amounted to reckless use of public funds, was improper and unethical is accordingly justified.

(b) Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?

- (aa) No evidence could be found indicating that Minister Joemat-Pettersson stayed at expensive hotels and guest houses at the expense of her Department after official residences were allocated to her and were ready for occupation.
- (bb) According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's bills for accommodation during this period were in fact for meetings in hotel rooms. If the costs were for accommodation, as invoiced, the amount would be excessive but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.
- (cc) Therefore, the allegation that Minister Joemat-Pettersson stayed at expensive hotels at state expense after the allocation of her official residences is, accordingly not supported by the evidence obtained during the investigation and her conduct in this regard did not constitute a violation of the Executive Ethics Code.

(c) Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?

- (aa) The information and evidence obtained during the investigation confirmed that the trip undertaken by Minister Joemat-Pettersson to Sweden in December 2009 was of an official nature, during which she held official meetings on matters relevant to her portfolio. The trip was combined with a family holiday, which commenced at the end of the official trip on 23 December 2009, and was cut short when she was recalled by the Presidency and returned on 1 January 2010. Evidence further confirmed that the return trips of the Minister's children and *au pair* were paid for by the state in violation of the provisions of paragraph 3.4 of Chapter 6 of the Ministerial Handbook, in the amount of R151 878.
- (bb) Minister Joemat-Pettersson's justification that she was advised by her Chief of Staff that the Department had to pay as she was recalled by the President at short notice, is upheld. However, the fact that the Department was not supposed to incur such costs remains a reality and the amount paid constitutes fruitless and wasteful expenditure, was unlawful and an act of maladministration by the Department.
- (cc) The former Chief of Staff of the Ministry, Ms B Bopape, provided Minister Joemat-Pettersson with incorrect advice in respect of the Department's responsibility to pay for the return air tickets of the Minister's children and *au pair* when she was recalled from Sweden in January 2010. Since Minister Joemat-Pettersson was not aware that she was being misled into accepting a benefit she was not entitled to, her conduct did not constitute a violation of the Executive Ethics Code

(d) Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?

(aa) According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's costs for accommodation, which appeared to be double bookings, were in fact in respect of official meetings held in hotel rooms. If the costs were for accommodation, as invoiced, the amounts would be excessive, but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.

(bb) The allegation that Minister Joemat-Pettersson incurred fruitless and wasteful expenditure for the Department through double bookings of accommodation is accordingly not upheld and her conduct did not constitute a violation of the Executive Ethics Code.

(e) Did the Department, particularly the Chief of Staff in the Minister's private office, fail to meet the requirements of the PFMA, regarding prudent management of public finances in the manner in which hotel and travel accommodation for the Minister was handled?

(aa) The former Chief of Staff of the Ministry, Ms B Bopape, was at all material times relevant to this report, in terms of the provisions of the Ministerial Handbook, the conditions of her appointment and sections 44 or 45 of the PFMA, responsible for the management of the expenditure related to Minister Joemat-Pettersson's travels and accommodation. She was compelled by the provisions of the PFMA to manage the expenditure with care to ensure that the resources of the Department were used effectively, efficiently and economically.

(bb) The information and evidence obtained during the investigation indicate that the Department, in particular the former Chief of Staff of the Ministry, Ms B Bopape did not exercise the necessary due diligence and prudence in handling state finances as envisaged in the PFMA, pertaining to the travel and accommodation expenses of Minister Joemat-Pettersson.

- (cc) In wrongly advising Minister Joemat-Pettersson that she was entitled to state paid return tickets for her children and *au pair* when she was not, Minister Joemat-Pettersson's Chief of Staff, Ms B Bopape, was reckless and accordingly acted in an improper manner. Her improper conduct resulted in fruitless, wasteful and unlawful expenditure, amounting to R151 878.
- (dd) She also violated the bounds of reasonableness and the provisions of section 45 of the PFMA in her approach to the Minister's accommodation and travel costs, specifically in allowing the unconscionable expenditure of R420 000 to accommodate Minister Joemat-Pettersson at the 28 A On Oxford guest house for a month during the period 13 June 2010 to 11 July 2010. The Department's conduct, and specifically the conduct of the Chief of Staff, was accordingly improper and amounted to maladministration.
- (ee) Ms Bopape was clearly reckless in regard to the expenditure of R420 000 incurred by the Department for Minister Joemat-Pettersson's accommodation. However, in her mitigation the fact that her relationship with Minister Joemat-Pettersson was new, the particular circumstances relating to the availability of reasonably priced accommodation during the duration of the World Cup and the gross incompetence of the DPW which caused anomalous circumstances in regard to the accommodation of the Minister and might have impaired her judgement, have to be taken into account.
- (xii) **The remedial action** to be taken as envisaged by section 182(1)(c) of the Constitution, is the following:
- (a) The President to consider reprimanding Minister Joemat-Pettersson, for her violation of the Executive Ethics Code referred to in this report.
- (b) The Acting Director-General of the Department:
- (aa) To take appropriate action to recover from Minister Joemat-Pettersson the amount of R151 858 being the amount unlawfully incurred in respect of the return flights of her two children and their *au pair* from Sweden to South Africa in January 2010;

- (bb) To take appropriate action in terms of section 38 of the PFMA and the Treasury Regulations against the former Chief of Staff of the Ministry, Ms B Bopape (who is still employed by the Department):
- In respect of her failure to take reasonable care to avoid the fruitless and wasteful expenditure incurred by the Department pertaining to Minister Joemat-Pettersson's accommodation at the 28 A On Oxford guest house during the period 13 June 2010 and 11 July 2010; and
 - In respect of her failure to provide Minister Joemat-Pettersson with correct advice pertaining to the provisions of the Ministerial Handbook, which resulted in fruitless and wasteful expenditure for the Department; and
- (cc) To conduct an audit of the controls and record keeping by the Ministry in respect of all expenditure incurred by the Minister relating to domestic and international travels and accommodation with a view to improve the relevant systems.
- (c) The Minister of Public Works to take urgent steps to:
- (aa) Expedite the completion of the refurbishment of the official residence allocated to Minister Joemat-Pettersson in Cape Town; and
- (bb) Identify the cause for the chronic delay in providing ministerial accommodation and rectify such cause with immediate effect.
- (d) The Secretary of the Cabinet to take urgent steps to ensure that the review of the Ministerial Handbook is finalised expeditiously and to consider incorporating guidelines which will improve the regulation of official trips by members of the executive to ensure that such trips are not combined and/or coincides with private holidays and/or leave of absence, save in exceptional circumstances, to be determined by the Cabinet.

- (e) The Director-General in the Department of the Presidency to consider taking appropriate steps to have the Prestige Accommodation Portfolio of Ministers removed from the DPW or to arrange for closer supervision of the allocation of official residences to Ministers by the Monitoring Unit in his Department.

1. INTRODUCTION

- 1.1 *COSTLY MOVES* is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution), section 3(2)(a) of the Executive Members' Ethics Act, 1998 (Executive Members' Ethics Act) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2 The report is submitted to the President of the Republic of South Africa, Mr J Zuma.
- 1.3 Copies of the report are presented to:
 - 1.3.1 The Speaker of the National Assembly;
 - 1.3.2 The Chairperson of the National Council of Provinces;
 - 1.3.3 The Minister of Finance;
 - 1.3.4 The Minister of Agriculture, Forestry and Fisheries;
 - 1.3.5 The Secretary to the Cabinet;
 - 1.3.6 The Acting Director-General of the Department of Agriculture Forestry and Fisheries (the Department); and
 - 1.3.7 Dr L Bosman, MP of the Democratic Alliance, who lodged the complaint
- 1.4 The report relates to an investigation into an allegation of a breach by the Minister of Agriculture, Forestry and Fisheries, Ms T Joematt-Pettersson, MP of the Executive Ethics Code, published in terms of the Executive Members' Ethics Act.

2. THE COMPLAINTS

- 2.1 A Member of Parliament representing the Democratic Alliance, Dr. L Bosman, MP, (the Complainant) lodged a complaint with the Public Protector, in terms of section 4 (1) of the Executive Members Ethics Act, on 25 October 2011.
- 2.2 The Complainant alleged that Minister Joemat-Pettersson had acted in violation of section 96(2) of the Constitution and the Executive Ethics Code in that she:
 - 2.2.1 Recklessly used public funds in occupying expensive accommodation at hotels while she was awaiting the allocation of her official residences in Cape Town and Pretoria;

2.2.2 Stayed at expensive hotels in Pretoria and Cape Town even after she was allocated official residences.

2.2.3 Dr Bosman stated specifically in this regard that:

“The Minister claims that she has spent so much money on hotels because she did not have an official ministerial residence when she took office in May 2009. Thus, for the first 9 months of her tenure, until the end of February 2010, she stayed at 4– and 5–Star hotels virtually every night. The total cost of her hotel stays during these 9 months was R900 795, or R100 000 per month, or R3 336 per day.

This is reckless use of public funds. The Minister had many cheaper options, such as renting houses for long-term stays in Pretoria and Cape Town, or insisting on cheaper 3-Star hotel accommodation whenever she travelled.

But instead, for instance, she stayed at the 5-Star Peermont D’ Oreale Grande Emperors Palace in Johannesburg from 16 September 2009 to 21 October 2009 (35 days), spending R289 352 for the privilege. That equals R8 267 per night. Later, from 13 June 2010 to 11 July 2010 (28 days), she spent R420 000 at a Johannesburg establishment—which is strangely listed as Pure One Toys CC (sic) that equals R15 000 per night.”

2.2.4 On 18 November 2011, the Public Protector received a further complaint from Dr Bosman in connection with Minister Joemat-Pettersson’ s visit to Sweden in December 2009, suggesting that she undertook a pretext official trip at state expense, which in fact was a holiday aimed at visiting her family in Sweden with her children, around Christmas time in 2009.

2.2.5 Dr Bosman’s specific allegations in this regard were that:

“The Minister of Agriculture, Forestry and Fisheries revealed in a reply to a DA parliamentary question (No. 3027—signed by the Minister on 30 November 2010), that she had gone overseas multiple times in her capacity as Minister since taking office in May 2009. This included a trip to Sweden from 20-22 December 2009, which cost R58, 743. In the reply, she described the trip as a ‘working visit to get counterparts and

discuss possible investment opportunities. However, this particular trip appears suspicious for four reasons:

First, according to the Parliamentary register of members' interests, the Minister owns a flat and summer house in Sweden. She also has family there. (They are related to her through her late husband, Thorvald Pettersson.) We wonder if she took her children with her on the trip. If so, did the state pay for them?

Second, unlike every other trip she took, where the Minister attended an official conference or met with a contactable individual, she offers no details about where she went or whom she met in Sweden. This is highly irregular.

Third, she went a few days before Christmas which is strange timing for a business trip, considering that government business winds down at this time of year.

Fourth, in her department's 2009/10 Annual Report the Minister provides a list of international trips she took in her capacity as Minister, but it does not mention this trip to Sweden.

We strongly suspect that Minister Joemat-Pettersson has also travelled to Sweden under false pretenses and at state expense, violating the Executive Ethics Code. We wonder if this was not a family vacation, taken close to Christmas-time. Considering that she has never made any public statements on the outcomes of this trip, it is hard not to reach such a conclusion.

To find out, we wrote to the Swedish Minister of Rural Affairs, Eskil Erlandsson—who is Joemat-Pettersson's ministerial counterpart in Sweden—to ask if she did actually meet 'counterparts and discuss possible investment opportunities', as she claimed. Up to now, we have not heard back from Mr. Erlandsson.

We also asked further parliamentary questions to find out who the Minister met with in Sweden, what hotel she stayed at, and what outcomes were achieved through her efforts. As of yet, we have heard nothing. We believe this should form part of the Public Protector's investigation into the Minister."

2.2.6 During the course of the investigation, the following information (Table 1) was obtained from the records of the Department and *Travel With Flair* (the appointed Travel Agent of the Department) that required scrutiny in respect of possible fruitless and wasteful expenditure by Minister Joemat-Pettersson, amounting to a sum of R64 882.55 incurred through, what appeared to be double bookings at expensive hotels:

PERIOD OF DOUBLE BOOKING	ORIGINAL ACCOMODATION RESERVED	ADDITIONAL ACCOMODATION RESERVED	ADDITIONAL AMOUNT PAID BY THE DEPARTMENT
2/01/10-3/01/10	Gallo Manor Country Lodge, Benoni	Melrose Archhotel, Johannesburg	R 2119.25
3/01/10	Gallo Manor Country Lodge, Benoni	Intercontinental Hotel, O R Tambo Airport	R 15 250 (Non arrival charge)
20/01/10-22/01/10	Gallo Manor Country Lodge, Benoni	Southern Sun, Pretoria	R 8206.80
13/06/10-16/06/10	Castello De Monte, Pretoria	28 A On Oxford Guest House, Johannesburg	R 26 322.40
19/07/10	28 A On Oxford Guest House, Johannesburg	Southern Sun, Pretoria	R 4000.00 (non arrival charge)
20/07/10-22/07/10	28 A On Oxford Guest House, Johannesburg	Southern Sun, Pretoria	R 8984.10
Total			R 64 882.55

Table 1

3. BACKGROUND

- 3.1 The Executive Ethics Code was published on 20 July 2000 and amended on 7 February 2007, by virtue of the provisions of section 2(1) of the Executive Members' Act. It regulates the ethical conduct of Members of the Executive, as contemplated by the provisions of section 96(1) of the Constitution.
- 3.2 The Executive Ethics Code prescribed standards and rules aimed at promoting open, democratic and accountable government with which Cabinet members must comply in performing their official responsibilities.
- 3.3 Minister Joemat-Pettersson was appointed to the Cabinet in the portfolio of Agriculture, Forestry and Fisheries, and assigned her powers and functions, by the President of the Republic of South Africa, on 10 May 2009.

4. ISSUES INVESTIGATED BY THE PUBLIC PROTECTOR

Based on an analysis of the complaints lodged by Dr Bosman, as referred to in paragraph 2 above; the following matters were investigated by the Public Protector:

- 4.1 Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?
- 4.2 Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?
- 4.3 Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?
- 4.4 Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?
- 4.5 Did the Department of Agriculture Forestry and Fisheries (the Department), particularly the Chief of Staff in the Minister's private office, fail to meet the requirements of the Public Finance Management Act regarding prudent management of public finances in the manner in which hotel and travel accommodation of the Minister was handled?

5. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT LODGED AGAINST MINISTER JOEMAT-PETTERSSON

5.1 Mandate of the Public Protector

- 5.1.1 The Public Protector is an independent institution, established under section 181 of the Constitution. Section 182(1) of the Constitution provides that the Public Protector has the power to:

- 5.1.1.1 Investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- 5.1.2.1 Report on that conduct; and
- 5.1.2.2 Take appropriate remedial action.
- 5.1.2 In terms of section 182(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation. Such legislation includes the Public Protector Act and the Executive Members' Ethics Act.
- 5.1.3 The allegations against Minister Joemat-Pettersson fall under the Executive Members' Ethics Act, read with the Executive Ethics Code.
- 5.1.4 The specific violations, as alleged, are the provisions of paragraph 2 of the Executive Ethics Code.
- 5.1.5 The jurisdiction of the Public Protector is spelt out in sections 3(1) and 4(1)(a) of the Executive Members' Ethics Act, which provide that the Public Protector must investigate any alleged breach of the Executive Ethics Code on receipt of a complaint by a Member of Parliament against a Cabinet member.
- 5.1.6 The complaints of a violation of the Executive Ethics Code against Minister Joemat-Pettersson were lodged by a member of the National Assembly.
- 5.1.5 In terms of section 3(2)(a) of the Executive Members' Ethics Act, the Public Protector must report to the President on an investigation into a violation of the Executive Ethics Code by a Cabinet member.
- 5.1.6 Section 3(4) of the Executive Members' Ethics Act states that when conducting an investigation, the Public Protector has all the powers vested in her/him under the Public Protector Act.
- 5.1.7 Section 6(4) of the Public Protector Act provides that the Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, *inter alia*, any alleged:
 - 5.1.7.1 Maladministration in connection with the affairs of government at any level; or

5.1.7.2 Abuse or unjustifiable exercise of power or other improper conduct by a person performing a public function.

5.1.8 The Public Protector may, in terms of section 8(1) of the Public Protector Act, make known to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

6 THE INVESTIGATION

The investigation was conducted in terms of section 182 of the Constitution, sections 3 and 4 of the Executive Members' Ethics Act and sections 6 and 7 of the Public Protector Act.

6.1 Scope of the Investigation

The scope of the investigation was limited to the period May 2009 to October 2011. The issues investigated included the ethical conduct of the Minister and the propriety of the conduct of officials of the Department.

6.2 Methods of gathering evidence

The following methods of gathering and analysing information were employed:

6.2.1 Interviews conducted

Interviews were conducted with the following persons:

6.2.1.1 The Minister of Public Works, Mr T Nxesi, MP;

6.2.1.2 The Chief Financial Officer of the Department, Mr J Hlatshwayo;

6.2.1.3 The former Chief of Staff in the Minister's Private Office, Ms B Bopape;

6.2.1.4 The Assistant Director of the Directorate: Facilities of the Department, Mr V Ncube;

6.2.1.5 The Management and staff of *Travel With Flair*, the Department's appointed travel agency; and

6.2.1.6 Four officials in the Ministry responsible for travelling and accommodation arrangements.

6.2.2 Meeting with Minister Joemat-Pettersson on 12 and 25 July 2012

6.2.2.1 On 12 and 25 July 2012, respectively, the Public Protector met with Minister Joemat-Pettersson in connection with the complaints lodged against her.

6.2.3 Documentation studied and its contents considered

6.2.2.1 Minister Joemat-Pettersson's report on her visit to Sweden in December 2009;

6.2.2.2 Minister Joemat-Pettersson's response to parliamentary questions relating to her accommodation at local hotels and guest houses;

6.2.2.3 Invoices and other documents relating to the accommodation and travels of Minister Joemat-Pettersson obtained from *Travel With Flair* (TWF);

6.2.2.4 Documents obtained from the Chief of Staff of the Ministry;

6.2.2.5 Documents obtained from a former Chief of Staff of the Ministry;

6.2.2.6 Documents and invoices obtained from the South African Embassy in Sweden;

6.2.2.7 Documents obtained from the *28 A On Oxford* guest house;

6.2.2.8 Documents obtained from *Pure Toys One CC*; and

6.2.2.9 Documents obtained from the Department of Public Works.

6.2.4 Correspondence

6.2.4.1 Letters addressed by the Public Protector to Minister Joemat-Pettersson, dated 8 November 2011, 14 November 2011, 11 January 2012, 1 February 2012, 3 February 2012, 8 May 2012, 19 June 2012, 29 June 2012 and 5 July 2012;

6.2.4.2 Letters received from Minister Joemat-Pettersson addressed to the Public Protector on 11 November 2011, 24 November 2011, 31 January 2012, 6 February 2012; 28 June 2012 and 6 July 2012.

6.2.4.3 Letters and e-mail correspondence between the Public Protector and the Chief of Staff of the Ministry, dated from 10 November 2011 to 5 October 2012;

6.2.4.4 Letters and e-mail correspondence between the Public Protector and TWF, the appointed travel agent of the Department, dated from 23 November 2011 to 23 May 2012;

6.2.4.5 Letters and e-mail correspondence between the Public Protector and the South African Embassy in Sweden, dated from 10 May 2012 to 14 May 2012;

6.2.4.6 Letter addressed by the Public Protector to Pure Toys One CC, dated 31 January 2012;

6.2.4.7 Letters exchanged between the Public Protector and the State Attorney, assisting Minister Joemat-Pettersson and Ms Bopape, between 18 April 2012 to 17 October 2012; and

6.2.4.8 Letters exchanged between the Public Protector and the Minister of Public Works from 23 November 2011 and 14 December 2011.

6.2.5 Statement by Minister Joemat-Pettersson

6.2.5.1 On 23 August 2012, Minister Joemat-Pettersson presented the Public Protector with a detailed statement in response to the allegations made against her, to which a copy of an internal departmental memorandum and affidavits of an official of the Ministry and her protectors were attached.

6.2.6 Legislation and other prescripts and precedents

Relevant provisions of the following legislation and other prescripts were considered and applied, where appropriate:

6.2.6.1 The Constitution of the Republic of South Africa, 1996;

6.2.6.2 The Public Protector Act, 1994;

6.2.6.3 The Executive Members Ethics Act, 1998;

6.2.6.4 The Public Finance Management Act, 1999 (the PFMA);

6.2.6.5 The Treasury Regulations issued in terms of the PFMA;

6.2.6.6 The Executive Ethics Code;

6.2.6.7 The Ministerial Handbook approved by the Cabinet on 7 February 2007;

6.2.6.8 Previous findings of the Public Protector in a similar investigation.

6.3 Approach to the investigation.

6.3.1 In terms of the mandate given to the Public Protector, the Public Protector's investigations and findings transcend lawfulness. The focus is on good administration and proper conduct. Such enquiry has three components:

6.3.1.1 What happened?

6.3.1.2 What should have happened? and

6.3.1.3 Is there a discrepancy between the two and does this constitute improper conduct as envisaged in section 182(1) of the Constitution, maladministration, abuse of power, improper enrichment or conduct resulting in unlawful or improper prejudice to any person, as envisaged in the Public Protector Act, and/or, as in this case, a violation of the Executive Ethics Code?

6.3.2 In determining whether conduct was improper or constituted maladministration or any of the violations envisaged in the Public Protector Act and the Executive Ethics Code, the Public Protector compares the conduct of government entities and officials complained of against the relevant legislation and other prescripts, to ascertain whether such conduct complied with the constitutional requirements of fairness, reasonableness, transparency, ethical standards and local and international best practices.

6.3.3 The complaints lodged with the Public Protector and the allegations made against the Minister of Agriculture, Forestry and Fisheries, referred to in this report, accordingly fall within the jurisdiction and powers of the Public Protector as envisaged under the Executive Members' Ethics Act, read with the Executive Ethics Code.

6.4 Report to the President in terms of section 3(3) of the Executive Members' Ethics Act, 1998

On 11 January 2012, the Public Protector informed the President, in terms of section 3(3) Executive Members' Ethics Act, 1998 that it was not possible to conclude the investigation of the complaint within 30 days, as required by the Act, and that her report would be submitted to him as soon as the investigation was completed.

6.5 The obligation of the Public Protector to follow due process

6.5.1 If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall, in terms of section 7(9)(a) of the Public Protector Act, afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

6.5.2 The Public Protector issued a Provisional Report on the matters investigated on 28 September 2012. It was presented to the Complainant, Dr L Bosman, Minister Joemat-Pettersson, the Acting Director-General of the Department of Agriculture, Forestry and Fisheries and Ms B Bopape, the former Chief of Staff of the Ministry of Agriculture, Forestry and Fisheries. The said parties were provided with an opportunity to comment of the contents of the Provisional Report, which were considered and, where applicable incorporated into the final report.

7 THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION.

7.1 The allocation to Minister Joemat-Pettersson of official residences in Pretoria and Cape Town

7.1.1 The records of the Department

7.1.1.1 According to the records of the Department of Public Works (the DPW), Minister Joemat Pettersson was allocated “*house No 2 Meyerspark*” in Pretoria on 2 September 2009, as her primary official residence. However, the Minister declined the allocated house and the Department then underwent a process of procuring additional houses as there were none available in its in stock.

7.1.1.2 The Minister was subsequently allocated House No 257 Acquila Street, Waterkloof, Pretoria in August 2010 as her secondary official residence in terms of which she is responsible for the payment of monthly market related rental.

7.1.1.3 In Cape Town, Minister Joemat-Pettersson was allocated a house at Avenue 4, Groote Schuur Estate, shortly after her appointment.

7.1.1.4 The Department advised the Minister before taking occupation of the house that it was due for an upgrade in June 2010 and that she would be provided with an official transit unit during the refurbishment period. It later transpired that the DPW postponed the refurbishment to September 2010, due to delays in obtaining clearance for the contractors by the National Intelligence Agency.

7.1.1.5 The Minister requested the DPW to look for alternative accommodation as the condition of her official residence was deteriorating. The DPW identified a four bedroom apartment at Rygersdal in Rondebosch, as alternative accommodation. On 19 August 2010, Minister Joemat-Pettersson declined the apartment, ostensibly as it was not ideal alternative accommodation for her needs and requested that a house be rented for her.

7.1.1.6 The Department was also looking for suitable accommodation for Minister Joemat-Pettersson and advised the DPW on 3 September 2010 that a house situated at Avenue

30, De Mist, Rondebosch, Cape Town was identified and that she would be moving in on 12 September 2010.

7.1.1.7 According to the lease agreement signed on 2 September 2010 in respect of the house, the lessee was cited as Minister Joemat-Pettersson and not the Department.

7.1.1.8 The Director-General of the Department approved a memorandum from Ministry dated 27 October 2010, in terms of which the rent for the house would be paid by the Department and the Minister be refunded in the amount of R144 000, representing the deposit and three months' rent at R 33 000 per month that she paid.

7.1.1.9 In March 2011, the DPW offered Minister Joemat-Pettersson a newly purchased official residence at No 33 Chardonnay in Bellville which she did not accept, indicating that it was too far from the city.

7.1.1.10 On 24 October 2011, the DPW took over the lease agreement referred to in paragraph 7.1.1.7 above, for a period of 12 months to coincide with the expected completion of the refurbishments of the official residence that was allocated to Minister Joemat-Pettersson in July 2009.

7.1.2 Interview conducted with the Minister of Public Works

7.1.2.1 The Public Protector met with the Minister of Public Works, Mr T Nxesi MP, on 14 November 2011, to discuss, *inter alia*, the allocation of official residences to Ministers.

7.1.2.2 Minister Nxesi stated in this regard that:

“The Department strives to strike a balance between the individual preferences of Members of the Executive and the available accommodation stock up to Ministerial Standard. DPW experienced a serious shortage of Prestige Houses after the expansion of the Cabinet in 2009 and after the reshuffle of Cabinet in October 2010. As a result, DPW was obliged to acquire additional houses to address the shortage of prestige houses.

...

At some of the new houses, the DPW had to effect cosmetic upgrades, installation of security measures and procurement of furniture before Members of the Executive could take occupation.”

7.1.2.3 He further explained that the DPW performs a due diligence exercise in finding official residences with a view to confirming whether there are vacant houses on its asset register that could be refurbished to accommodate new members of the executive. If there are no such houses available, the DPW initiates a process of acquiring additional houses by approaching real estate agencies to provide lists of what is available in the market, which would then be valued for consideration by the Land Affairs Board.

7.1.2.4 When an official residence is due for an upgrade, the DPW will provide a state-owned transit unit. Minister Nxesi stated that in some instances the DPW had to lease alternative accommodation, the cost of which varied between R35 000 and R48 000 per month.

7.1.2.5 As far as the condition of official residences is concerned, Minister Nxesi indicated that the DPW conducts a technical inspection prior to the acquisition of a new residence from the market. He conceded that it is possible that unforeseen defects not readily visible to the naked eye may arise after the acquisition of the property. However, this has not been reported as a major issue in the acquisition of properties since 2009.

7.2 The accommodation of Minister Joemat-Pettersson in hotels and guest houses in Cape Town and Gauteng

7.2.1 The records of the Department and *Travel With Flair* in respect of the accommodation of Minister Joemat-Pettersson in local hotels and guest houses in Cape Town and Gauteng

Table 2 below represents a breakdown of the Minister’s accommodation in local guesthouses and hotels in Gauteng and Cape Town reserved by TWF and paid for by the Department, as it appears in its records.

PERIOD OF ACCOMMODATION	NAME OF HOTEL / GUEST HOUSE	GUESTS ACCOMMODATED ACCORDING TO INVOICES	COST OF STAY
17/05/09-18/05/09	Melrose Arch Hotel, Johannesburg	Minister Joemat-Pettersson	R 3080.50
18/05/09-20/05/09	Vineyard Hotel and Spa, Cape Town	Minister Joemat-Pettersson	R 4454.20
23/05/09-26/05/09	Sheraton Hotel, Pretoria	Minister Joemat-Pettersson	R 15 121.50
26/05/09-26/06/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 41 040.00
1/06/09-5/06/09	Vineyard Hotel and Spa, Cape Town	Minister Joemat-Pettersson	R 9881.00
15/06/09-17/06/09	Southern Sun, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 5454.00
16/06/09-21/07/09	Vineyard Hotel and Spa, Cape Town	Minister Joemat-Pettersson	R 134 735.86
23/06/09-24/06/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 4394.85
3/07/09-4/07/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 3221.02
10/07/09-12/07/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 3078.00

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13/07/09-16/07/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 8584.00
16/07/09-19/07/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 4104.00
17/07/09-19/07/09	Peermont D'Oreale Grande, Johannesburg	Minister Joemat-Pettersson	R 6419.00
19/07/09-31/07/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 14 364.00
23/07/09-24/07/09	Radissonblu Hotel, Sandton	Minister Joemat-Pettersson	R 5260.00
27/07/09-28/08/09	Radissonblu Hotel, Sandton	Minister Joemat-Pettersson	R 7293.35
28/07/09-29/07/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 3729.50
29/07/09-30/07/09	Radissonblu Hotel, Sandton	Minister Joemat-Pettersson	R 5443.35
1/08/09-3/08/09	Melrose Arch Hotel, Johannesburg	Minister Joemat-Pettersson	R 2763.25
1/08/09-31/08/09	Aluane Town Lodge, Pretoria	Minister Joemat-Pettersson	R 35 910.00
7/08/09-8/08/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 3899.95
12/08/09-13/08/09	Peermont D'Oreale Grande, Johannesburg	Minister Joemat-Pettersson	R 3000.00

16/08/09-19/08/09	Peermont D'Oreale Grande, Johannesburg	Minister Joemat-Pettersson	R 9000.00
20/08/09-22/08/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 9784.00
23/08/09-26/08/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 11 173.50
26/08/09-04/09/09	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 43 809.50
8/09/09-16/09/09	Peermont D'Oreale Grande, Johannesburg	Minister Joemat-Pettersson	R 24 537.50
16/09/09-20/10/09	Peermont D'Oreale Grande, Johannesburg	Minister Joemat-Pettersson	R 289 351.81
20/10/09-31/10/09	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 8767.00
1/11/09-30/11/09	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 23 113.00
1/12/2009-31/12/2009	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 23 910.00
1/01/10-31/01/10	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 26 250.00

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2/01/10-3/01/10	Melrose Arch Hotel, Johannesburg	Minister Joemat-Pettersson	R 2119.25
3/01/10 (Non-arrival charge)	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 15 250.00
20/01/10-22/01/10	Southern Sun, Pretoria	Minister Joemat-Pettersson	R 8206.80
01/02/10-28/02/10	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 23 625.00
28/02/10-1/03/10	Gallo Manor Country Lodge, Benoni	Minister Joemat-Pettersson	R 875.00
10/03/10-11/03/10	Intercontinental Hotel, O R Tambo International Airport, Johannesburg	Minister Joemat-Pettersson	R 16 035.00
11/03/10-14/03/10	Michelangelo Towers, Sandton	Minister Joemat-Pettersson	R 11 288.00
26/03/10-27/03/10	Michelangelo Towers, Sandton	Minister Joemat-Pettersson	R 3679.00
7/04/10-09/04/10	Southern Sun, Pretoria	Minister Joemat-Pettersson	R 8237.10
09/04/10-12/04/10	Michelangelo Towers, Sandton	Minister Joemat-Pettersson	R 10 597.50
24/04/10-27/04/10	Michelangelo Towers, Sandton	Minister Joemat-Pettersson	R 10 460.50

8/06/10-12/06/10	Hydro Executive Apartments, Johannesburg	Minister Joemat-Pettersson	R 24 000.00
12/06/10-16/06/10	Castello De Monte, Pretoria	Minister Joemat-Pettersson	R 32 903.00
13/06/10-11/07/10 (Pure Toys One CC during the 2010 FIFA World Cup)	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson, kids and protector	R 420 000.00
12/07/10-01/08/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson and protector	R58 495.00
19/07/10 (Non-arrival charge)	Southern Sun, Pretoria	Minister Joemat-Pettersson	R 4000.00
20/07/10-22/07/10	Southern Sun, Pretoria	Minister Joemat-Pettersson	R 8984.10
01/08/2010-15/08/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson	R21 872.50
15/08/2010-31/08/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson	R21 822.50
31/08/2010-07/09/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson	R10 611.50
12/09/2010-13/09/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson	R1450.00
3/10/10-5/10/10	28A on Oxford Guest House, Johannesburg	Minister Joemat-Pettersson	R2900.00

Table 2

7.2.2 The official records and other information obtained relating to the accommodation of Minister Joemat-Pettersson at the *Peermont D'Oreale Grande Hotel*, Emperors Palace in Kempton Park from 8 September 2009 to 21 October 2009.

7.2.2.1 Table 2 above indicates that Minister Joemat-Pettersson was accommodated at the *Peermont D'Oreale Grande Hotel* in Kempton Park for the period 8 September 2009 to 20 October 2009 at a cost to the Department of R313 889.

7.2.2.2 According to an invoice and accommodation voucher obtained from TWF during the investigation, dated 8 September 2009, reservations were made for Minister Joemat-Pettersson to be accommodated at the establishment for 22 nights at a rate per night of R3000 totaling R66 000. (from 8 to 30 September 2009)

7.2.2.3 Another accommodation voucher, dated 16 September 2009, was issued in respect of further reservations for Minister Joemat-Pettersson at the same establishment for 14 nights (from 16 to 30 September 2009) at a rate of R8085 per night, totaling R113 190.

7.2.2.4 It was also established that Minister Joemat-Pettersson was accommodated at the hotel from 1 October 2009 until 20 October 2009, at the rate of R8085 per night.

7.2.2.5 The records of TWF and the Department indicate that the total payment made to the establishment in respect of the Minister's accommodation for the period 8 to 15 September 2011 amounted to R24 000.

7.2.2.6 In respect of the periods 16 September 2009 to 20 October 2009, the total cost of the Minister's accommodation was R282 975.

7.2.2.7 During the course of the investigation referred to in this report, it was established from the General Manager of *Emperors Palace*, which includes the *Peermont D' Oreale Grande Hotel*, Mr W Hill, that Minister Joemat-Pettersson was initially accommodated in an Executive Suite at R3000 per night. She was not satisfied with the suite and was upgraded to a Junior Suite, a room that is superior in size and furnishings to an Executive Suite, at a rate of R8085 per night, as from 16 September 2009.

7.2.2.8 Mr Hill further explained that Minister Joemat-Pettersson was also not satisfied with the Junior Suite and the hotel upgraded her again to a Presidential Suite, free of charge, ostensibly due to her status as a Minister. This upgrade to the Presidential Suite for the Minister amounted to a “saving” of R6 845 per night as the government rate for the Presidential Suite offered to the Minister free of additional charge, was R14 930 per night.

7.2.2.9 TWF confirmed during the investigation that Minister Joemat-Pettersson was not satisfied with the room she was offered from 8 September 2009 to 15 September 2009. As a consequence thereof, the hotel had to upgrade her to a Presidential Suite for the remainder of her stay at the hotel and the Department was charged at a daily rate of a Junior Suite. No reasons for her dissatisfaction could be determined by TWF.

7.2.3 The official records and other information obtained relating to the accommodation of Minister Joemat-Pettersson at the 28A On Oxford Guest House during the period 13 June 2010 to 11 July 2010

7.2.3.1 As indicated in Table 2 above, the Department paid an amount of R420 000 for the accommodation of Minister Joemat-Pettersson at the 28A On Oxford guest house in Sandton, during the period 13 June 2010 to 11 July 2010.

7.2.3.2 According to the official records, the invoice relating to this accommodation of Minister Joemat-Pettersson was presented to the Department by *Pure Toys One CC*, that requested payment to be made to *Front Cover CC*.

7.2.3.3 The sequence of events leading to the Minister’s accommodation at the 28A On Oxford guest house, was the following:

- (a) TWF made reservations for Minister Joemat-Pettersson, her children, their minder and her protector at the *Hydro Executive Apartments* in Johannesburg for the period 8 June 2010 to 13 June 2010. The reservation was for an apartment and a room for the protector, was confirmed by *Hydro Executive Apartments* on the same day and it forwarded pro-forma invoices for payment to the travel agent.

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- (b) On 9 June 2010, the Ministry instructed TWF to cancel the reservation for the Minister, her children and their minder. TWF advised that it would cost the Department R20 000 to cancel the reservation.
- (c) In an e-mail response, dated 14 June 2010, Ms J Morebudi, the Personal Assistant to Minister, advised TWF that, ***“This one at Hydro I said to the lady that Minister does not want I, (sic) she prefers Oxford. I was under the impression that it was cancelled yesterday.*”** [emphasis added].

7.2.3.4 From the e-mail correspondence between the Ministry and TWF, it appeared that the cancellation that was referred to on 9 June 2010 related to reservations that were made from 13 June 2010.

7.2.3.5 Mr Pieter Roux, the Manager of the *28A On Oxford* guest house was interviewed on 31 January 2012. He explained that the normal tariff per night at the guest house, at the relevant time, was R1450 per person. However due to the FIFA 2010 World Cup, *Pure Toys One CC* and the *28A On Oxford* guest house entered into an agreement in terms of which the former booked all the accommodation at the guest house for the duration of the event, at a determined price. As a result of this agreement, all accommodation arrangements for that period had to be made with *Pure Toys One CC*.

7.2.3.6 Mr Roux’s explanation was confirmed during the investigation by a copy of the agreement that was provided by a member of *Pure Toys One CC*, signed on 8 December 2009, in terms of which it hired 8 suites to be sub-letted for a period of 23 nights, during the duration of the FIFA 2010 World Cup.

7.2.3.7 At the time when the Ministry made the reservation with *Pure Toys CC* for Minister Joemat-Pettersson to be accommodated at the guest house for the period 13 June 2010 to 11 July 2010, the rate charged was R4612 per room per night excluding VAT. According to the invoice submitted to the Department, the accommodation of the Minister amounted to 84 rooming nights (for three rooms) which resulted in a total cost of R420 000.

7.2.3.8 Mr V Ncube, the Assistant Director: Facilities of the Department, stated in an interview that he was approached by the Ministry to assist in finding suitable accommodation that could be considered as an official residence, for Minister Joemat-Pettersson.

7.2.3.9 Several houses were viewed, with the assistance of TWF by officials of the Ministry. However, the Ministry subsequently indicated that Minister Joemat-Pettersson preferred accommodation in the Sandton area.

7.2.3.10 During the period of the FIFA 2010 World Cup, TWF was requested to provide the Department with three quotations in respect of possible alternative accommodation for the Minister.

7.2.3.11 The Ministry informed the Facilities Division of the Department that the *28A On Oxford* guest house was regarded as suitable for the Minister for the period concerned and an invoice in the amount of R420 000 was presented to be forwarded by the Facilities Division to TWF for processing, as payment had to be made in advance.

7.2.3.12 According to Mr Ncube, he raised his concerns about the exorbitant amount of R420 000 with officials of the Ministry, who referred him to the former Chief of Staff, Ms B Bopape. She refused to listen to him and the other officials, persisted that the reservation had to be confirmed and instructed that that the amount be paid.

7.2.3.13 Ms Bopape, who was responsible for the management of the Private Office of the Minister during the relevant time, was not very helpful during the investigation. She just denied during her interviews that she was aware of or involved in the management of the travel and accommodation arrangements of the Minister.

7.2.3.14 She also denied that she was involved in the reservation of the accommodation for Minister Joemat-Pettersson the *28A On Oxford* guest house, despite conceding that in her position as Chief of Staff, she was in charge of and responsible for the overall management of the Minister's Private Office.

7.2.4 The initial response of Minister Joemat-Pettersson in respect of her accommodation in local hotels / guest houses

7.2.4.1 On 08 November 2011, the Public Protector addressed a letter to Minister Joemat-Pettersson in connection with the complaints lodged against her, referred to in paragraph 2 above. In her response, dated 24 November 2011, Ms Joemat-Pettersson stated, *inter alia* as follows:

“In Cape Town, Johannesburg and Pretoria I lived in hotels and guest houses while official accommodation was not available to me, as it ought to have been.

Bookings, payments and other administrative arrangements regarding accommodation were made by a service provider and my ministerial staff. I had no personal knowledge of the cost of accommodation

BACKGROUND CIRCUMSTANCES

My personal circumstances

I was appointed Minister of Agriculture, Forestry and Fisheries on 10 May 2009. At the time of my appointment I lived in Kimberley with my two dependent children then aged 7 years and 9 years respectively. I am a single parent. I rely on support staff who live with me to help me take care of my children when I am working or away from home.

In deciding on accommodation, I had to take into account, among other things, the effective performance of my official duties and my family responsibilities, in particular the care, upbringing and schooling of my two children.

I notified the Department of Public Works (“DPW”) in May 2009 that my primary residence should be located in Pretoria. I accordingly requested that I be provided an official residence in Pretoria. I enrolled my children in school at Marist Brothers, Gauteng from January 2010. I had every expectation of a response from DPW within a reasonable time. However, no official accommodation was arranged, and I was obliged to occupy the temporary hotel and guest-house accommodation detailed below.

During 2009 I made regular enquiries to the DPW in regard to progress made. In the absence of any positive response I eventually requested my department to identify an official residence for me in Pretoria. It was only on 25 September 2010 that a residence in Pretoria was identified by my department and approved and allocated by DPW.

Owing to the uncertainty concerning my accommodation arrangements in Pretoria, I cancelled arrangements for my children to attend school in Gauteng and arranged for them to start school in Cape Town in January 2010 as I had already been allocated a state-owned official residence in Cape Town in July 2009, as detailed below.

Accordingly, I decided to make Cape Town my primary place of residence and notified the DPW accordingly. This occurred in January 2010. The Cape Town accommodation however proved wholly unsatisfactory and I was obliged to move out in September 2010. I accordingly moved into rented accommodation in Rondebosch where I still reside.

Accommodation in Cape Town

From the date of my appointment as Minister on 10 May 2009 until 16 July 2009, I stayed in hotel accommodation as no other accommodation was available to me at the time. It appears from the invoice of the Vineyard Hotel where I stayed at the time that accommodation costs were incurred after 16 July 2009. These costs were, however, not incurred by me, but by my ministerial staff. I vacated the hotel in order to move into the official residence on 17 July 2009.

I moved into an official house on Groote Schuur Estate on 17 July 2009. This house had significant and chronic defects, including broken toilets, leaking bathrooms and a roof that threatened to collapse. The problems with the house are well-documented in various letters that were written by the Director-General of DAFF to his counterpart at DPW, and by me to the Minister of Public Works. I provided them with a list of repairs required.

In acknowledging the defects, DPW undertook to do the necessary repairs, but by January 2010 these had still not commenced. I had by then not been allocated the primary official residence in Pretoria requested in May 2009. Being the start of a new

school year, and not wishing to be separated any longer from my children, I moved them to the house in Grootte Schuur Estate despite its condition, and found new schools for them in Cape Town

I therefore stayed on in the house, despite its defects and in the hope that repairs would be effected. The house, however, suffered a series of mishaps, including a serious electrical fault in the floor of the kitchen. Owing to the condition of the house it was agreed between my department and DPW that I would move out in September 2010, since it had become unsafe. This was the only occasion on which I had vacated an official residence.

DPW offered me alternative accommodation in place of the official residence in a flat or a hotel for a period of 4 to 6 months, both of which I refused since they would have not been a suitable environment for the children. In the absence of any suitable alternatives being provided by DPW, and with matters having become intolerable, I secured a rented accommodation in Cape Town as from 12 September 2010.

In order to secure this property I was required to pay the deposit (R45000) and one month's rental in advance from my own pocket (R33000). I also had to purchase my own beds and other furniture (R18000) which DPW would not provide. Electricity, water, garden and pool services have all been paid by me, some of which have been refunded by DAFF. The costs of a security fence, which I also paid for, were reimbursed by DPW after 6 months. On 6 September 2010 I had to appeal to the Minister of Police for VIP static protection at the house, which had not been provided by the SAPS. However, I then discovered that the SAPS could not provide the necessary static protection because DPW had not established a guard house for the static protectors on the property.

I still live in this rented accommodation, which is a modest family house suitable for me, my sons, and the support staff required to look after my children during my frequent absences. I paid the monthly rent of R33 000, which until October 2011 has been reimbursed by DAFF. As from October 2011 the rental has been paid by DPW. I have taken personal responsibility for this, despite this house being regarded as my primary official residence.

The repairs to the house on Groote Schuur Estate commenced only in October 2011 – more than a year after I vacated it. Since taking occupation of the rented house on 17th July 2009, I have not occupied a hotel in Cape Town.

Accommodation in Pretoria and Johannesburg

Despite my request at the time of appointment for my primary official residence to be in Pretoria, I was not allocated an official house there for well over a year. I was required to make my own accommodation arrangements during this time. Unable to consider renting a third house at my own expense (besides my private home in Kimberley and the official house in Cape Town) I initially stayed in various hotels in Gauteng.

The suggestion that I could have “simply rented a house” instead of staying in guest houses or hotels is ill-informed and fails to recognize the procedures to be followed in respect of this process. Advice from SAPS has indicated that it could take at least 3 months to undertake a comprehensive security assessment of the location and suitability of the premises.

After this, the DPW would need to address any shortfalls in this regard, take necessary steps to provide for security and support staff at the residence, and also ensure that necessary funds and approvals are secured. This would also take time. I knew that DPW was working to try and secure a property, but I had no idea when this would happen. To enter into a long-term lease despite these uncertainties would have been irresponsible and a waste of cost, time and effort, since I may have been offered accommodation at any stage.

However the inconvenience of accommodating myself, my children, my support staff and my protectors at hotels was a matter of concern to me. I was also concerned about the costs, knowing that in general hotel costs tend to be high. Hotels were also not a suitable venue for work, my children or appropriate from a security point of view. I accordingly instructed the Department to arrange accommodation for me in guest houses. This was my preferred option, because it was often more appropriate when children visited me over school holidays and weekends. I also understood the cost of accommodation at guest houses in general to be more reasonable than hotels. Within

the first month of my appointment, I stayed in the Aluane Town Lodge in Pretoria at a rate of R1050 per night for a total of approximately three months.

When it became apparent that DPW would not be able to allocate me a house in the near future, and after a period during which I had a number of shorter stays in hotels, I again requested the Department on 20 October 2009 to move me to a guest house in Gallo Manor in Johannesburg for almost six months at a cost of R875 per night. This amount is comparable to the amount that would have been charged by a Holiday Inn or 3 star hotel and was very reasonable in the circumstances. The Gallo Manor guest house then commenced renovations in preparation for the FIFA World Cup. With the presence of builders in the house there were security concerns, particularly relating to documents which I had to keep there. I was therefore obliged to move out.

*Thereafter, I stayed in the Hydro Executive Apartments from 8 to 12 June 2010. Although I intended to stay in these apartments for longer, on 12 June 2010, on returning from work to the apartment, I found my bags packed and in storage, since the entire venue had been pre-booked for the World Cup. **At short notice the Department sought alternative accommodation, while my children and I slept in my car.***

My staff eventually found a room at Castello del Monte for the night of 12 June, where I was forced to share a room with my children and their minder – an untenable situation that obliged me to seek other alternatives.

The Department then found accommodation in another guest house, 28A Oxford Road, which appears as “Pure Toys One CC” on the schedule of accommodation expenses. I stayed there for the period 13 June 2010 to 11 July 2010, together with my children, their minder and my protectors. Although I anticipated that the price of a guest house would have been lower than hotel accommodation, it subsequently appeared that this was not the case.

While not attempting to justify the amounts, there are a number of factors to take into account in regard to the accommodation costs incurred at this establishment:

- It was the only place available under the emergency circumstances that prevailed, where I was without a room for my children, their minder and myself.*

- *It was during the FIFA World Cup, when all accommodation prices were inflated. The normal costs at this guest house are around R1500 per night. Based on the quality of the room and the standard of service being provided, I had every reason to assume that this kind of price being charged (although I was also aware that during the FIFA World Cup the most prices were inflated).*
- *A foreign company had block-booked the guest-house for this period, and it could not be booked except through this company. As far as I can recall, the booking was for four rooms (not three as indicated on the vouchers), including for my children, their minder, and my security staff, at a total cost of R15 000 per night, and not per room as alleged.*
- *A guest of mine who stayed at the same venue occupied a further room that was paid for, from my personal funds. I was at that stage confined to a wheelchair and the use of crutches, having suffered an accident, which necessitated support staff to assist me in performing my official duties. While at the guest house, I met with a number of stakeholders, including the Transvaal Agricultural Union, the Audit Committee of the Department, the CEO of ARC and the IDT, and during these meetings refreshments were served and paid for as part of the overall bill.*
- *Although my staff would have made enquiries prior to finalizing my reservation, my staff and the Department can confirm that at no time was I made aware of the costs of the accommodation. Payment for my quest was done by my protector, using funds I had given her, as is our usual practice.*
- *After a period of 16 months staying in hotels and guest houses in Gauteng, I was finally allocated an official residence in Pretoria on 25 September 2010, which I occupied with great relief and without delay. This was designated, at my request, as my secondary residence, for which I pay rental in accordance with the Ministerial Handbook.” (underlined emphases added)*

7.2.4.2 Attached to Minister Joemat-Pettersson’s response, was a schedule of the hotel and guest houses that she referred to, including a breakdown of the costs incurred.

7.2.4.3 She further explained that due to the process of restructuring and re-organization of the Department following her appointment as Minister, which involved the incorporation of both the Forestry and Fisheries components into the newly established Ministry, she was required to travel between Cape Town and Pretoria on a regular basis. In addition, Minister Joemat-Pettersson stated that:

“The apparent “double bookings” where, for example, accommodation was booked simultaneously in more than one venue, and ‘no shows’ where venues were booked but not used, are regrettable, but to some extent inevitable due to the nature of my work. For example, if the President called me late one afternoon and instructed me to meet him the next morning in Cape Town, I could hardly explain that I had booked accommodation in Johannesburg which could not be vacated.

Double bookings also arose from the numerous instances in which I would have been in one area or venue for most of the day, then would have returned to the hotel to change and pack bags, before leaving for another area or venue, where I may have been required to attend an evening function or meeting the next day. By checking out late in the day, I would have been charged for that venue, as well as for the other venue in which I stayed overnight.

On occasion, a day-room was also booked for me in order to have a place for me to freshen up in between attending long meetings and functions. Without an official residence, I had to have some base to keep my clothes, and this would have necessitated two bookings for the same day.”

7.2.4.4 As far as the reservation of accommodation is concerned, Minister Joemat-Pettersson explained that it was made by the appointed travel agent of the Department, TWF, in conjunction with the staff of the Ministry. She was only consulted on occasion when it related to the suitability of the venue for the purpose it was required. These discussions did not include the cost of the accommodation.

7.2.4.5 In her response, Minister Joemat-Pettersson referred to the provisions of the Ministerial Handbook and further contended that:

“I was hoping and believed that I would be relocated from Kimberley to an official residence in Pretoria. I was also hoping and believed that I would be accommodated in an official residence in Cape Town.

Until such time as the official residences in Pretoria and Cape Town became available, I believed that I could use alternative accommodation. This would have included hotel or guest house accommodation for me and my children.

I also believed that alternative accommodation at state expense would be made available to me once I had to vacate the official residence in Cape Town when it became unavailable due to repairs having to be done.”

7.2.4.6 Minister Joemat-Pettersson further indicated that her office was investigating *the increase on the daily rate from R3000 to R8085 per night at Peermont D’Oreale as well as her accommodation costs for her stay at 28A on Oxford guest house.* No further explanation for the increase in the rate that was paid, was provided by her.

7.2.4.7 On 19 June 2012, the Public Protector addressed a letter to Minister Joemat-Pettersson informing her that the Provisional Report on the investigation was in the process of being finalized and requesting the Minister to clarify a few issues for the purposes thereof. In her said letter, the Public Protector stated:

“In your further report to me dated 24 November 2011, you stated that you had a guest at the establishment (the 28A on Oxford guest house) who occupied a further room which was paid for from your personal funds. In this regard kindly indicate the amount that you paid for your guest’s reservation as well as the period of his/her stay at the guest house.”

7.2.4.8 In her response, dated 6 July 2012, Minister Joemat-Pettersson replied that:

“The payment of my guest’s accommodation from my private funds is a personal matter which is not relevant to the issues at hand. However, in the interest of transparency and to demonstrate my cooperation with your investigation, please take note that an amount of R15 000 was paid for a five-day period.”

7.2.4.9 The Public Protector also posed the following question to the Minister in her said letter:

“Further thereto, you informed me that your office is investigating the increase on the daily rate from R3000 to R 8085 at the Peermont D’ Oreale Hotel situated at Emperors Palace as well as your accommodation costs at 28 A On Oxford Guest House. Kindly advise of the status of this investigation and furnish me with a copy of the report presented to you, should it be available.”

7.2.4.10 The Minister responded as follows:

“The information obtained from our investigation shows that although four rooms were booked at the 28A On Oxford Guest House, one of the rooms was paid for from my private funds. With respect to Peermont D’Oreale Hotel, the communication furnished to you on 21/05/2012 indicates that I was moved from an Executive Suite into a Junior Suite-hence the difference in room rate. There is no formal written report.”

7.2.5 The additional information provided by Minister Joemat-Pettersson in her statement of 23 August 2012

7.2.5.1 Minister Joemat-Pettersson emphasised in her statement submitted to the Public Protector, dated 23 August 2012, that she did not make the travel and accommodation arrangements and reservations referred to in this report. She stated in this regard that:

“My Chief of Staff (COSMIN) is responsible for all administrative, secretarial and executive matters in the ministry. The COSMIN is specifically tasked with the implementation of the Ministerial Handbook. “

7.2.5.2 The Minister further indicated that at the times relevant to the investigation, Ms B Bopape was the Chief of Staff. *“I relied on her completely in this regard, and had no reason not to believe that she would at all times implement the Ministerial Handbook.”*

7.2.5.3 Minister Joemat-Pettersson further explained that:

“In summary the process would involve that my ministerial staff would request TWF to identify available accommodation for a specific period in a specific area depending on

my diary and the meetings I had scheduled. Since TWF works with other ministries, they were aware of the rules regarding the kind of accommodation in which ministers may stay. The Transport Reservation Instruction Form would then be signed by my ministerial staff and sent to the Departmental Transport Officer, at the time Mr Victor Mncube (sic), who would then decide whether they would authorise the booking or not. The Transport Office did not and does not consult with me on accommodation or any other logistical matter; they engage directly with my COSMIN. The COSMIN must ensure that all the prescripts are complied with by the Ministry

Once travel was approved, I assumed that compliance and due diligence were followed by COSMIN and that all expenses fell within the ambit of the Ministerial Handbook.

...

At no point did my COSMIN inform me of any deviation, non compliance or concerns on my travel and accommodation bookings or expenses.”

7.2.5.4 It was also contended in her statement that when a minister is appointed, the State adopts the responsibility to provide him/her with accommodation that is suitable to his/her needs. The particular demands on time and convenience placed on a minister obliges the State to accommodate and compensate the negative effects that the Minister's official duties have on her duties as a single parent.

7.2.5.5 With reference to the fact that the Ministerial Handbook allows ministers to use accommodation of any standard of their choice for their overnight or short-term visits, Minister Joemat-Pettersson stated that:

“The Public Protector has in the past made the point that travel requirements must be tempered by questions of accountability to the public and responsibility in respect of the burden on the public purse. This must undoubtedly be so.” (emphasis added)

7.2.5.6 As far as the upgrading of her accommodation at the *Peermont D'Oreale Hotel*, referred to in paragraph 7.2.2.7 above is concerned, Minister Joemat-Pettersson denied that she was not satisfied with the Executive Suite. She explained that she requested an extra room as her son, his nanny and *au pair* were to stay with her at the time. The hotel then

provided her with a Junior Suite instead. She could not explain why the hotel subsequently upgraded her to a Presidential Suite.

7.2.5.7 Minister Joemat-Pettersson denied that she was aware of the cost of the accommodation at the 28A On Oxford guest house at the time of the FIFA 2010 World Cup. She conceded that she paid for a guest to stay at the guest house , but stated that the payment was made by her protector. She explained:

“At times my protector would pay using my credit card which payment I would authorise. I am informed by my ministerial staff that the payment for my guest at 28A Oxford (sic) during the World Cup was paid for by credit card.

...

The form authorising payment by credit card did not reflect the amount. The reason I was not concerned with the amount is because it was being paid for from my personal funds and not the department’s funds.”

7.2.5.8 The Minister also denied that she preferred to stay at the 28A On Oxford guest house. The arrangements for her to stay at the guest house were made by her staff.

7.2.5.9 She recalled having been offered an apartment in Rondebosch, Cape Town while her official residence was being refurbished. She requested to be allocated a ground floor unit as she was confined to crutches, having suffered an accident. Instead, a she was allocated a unit on the third floor. In her view, the apartment was in any event not suited for the needs of her small children.

7.2.5.10 Minister Joemat-Pettersson further denied any knowledge of a newly purchased official residence at 33 Chardonnay Bellville that was offered to her. (See paragraph 7.1.1.9 above).

7.2.5.11 She only took occupation of her official residence in Pretoria, which was allocated to her on 25 September 2010, on 6 October 2010, due to renovations that had to be done. She was therefore not in a position to have occupied her official residence when she stayed at the 28A On Oxford guest house in Sandton from 3 to 5 October 2010.

7.2.5.12 Attached to Minister Joemat-Pettersson's statement were affidavits of her two protectors, signed on 13 August 2012 and 16 August 2012, respectively, confirming that she stayed at the 28A On Oxford guest house in June 2010, after there were some difficulties in finding accommodation for her at the time. One of the protectors also confirmed that a personal guest of the Minister also stayed at the guest house, at her own expense.

7.2.5.13 Minister Joemat-Pettersson furthermore referred to the records of double bookings made in respect of her accommodation that was discovered during the investigation. (see paragraph 2.2.6 above) as follows:

"To the best of my recollection, the bookings at other hotels during that time all related to meetings held at those venues, some of which would carry on late into the night. These meeting (sic) were held in ordinary hotel rooms-I remember specifically meeting in the sitting area of hotel rooms during that time. It has been explained to me that this was done when meeting rooms in the hotel was (sic) either unavailable, or inappropriate. I am told that the service provider, TWF, would still give the description 'accommodation' on their invoices for these bookings."

7.2.5.14 The booking at the *Intercontinental Hotel* at the O R Tambo International Airport also related to further meetings with dignitaries who needed her approval (as the Minister of Agriculture) for the release of prescribed animal products during their stay.(See paragraph 7.3.9.2 below)

7.2.5.15 She concluded in this regard:

"The booking at the Southern Sun Hotel in Pretoria from 20-22 January 2010 related to the fact that the Cabinet Lekgotla was held in Pretoria from 20-22 January 2010. This was a particularly busy time, and meetings had to be arranged after hours after conclusion of the days' events with various stakeholders including the agricultural unions. Due to the uncertainty as to when the conference would end for the day, accommodation rooms had to be booked instead of meeting rooms, as there were specific time constraints regarding check in times for meeting rooms."

7.3 Minister Joemat-Pettersson's visit to Sweden from 20 December 2009 to 1 January 2010

7.3.1 The presidential approval of Minister Joemat-Pettersson's trip to Sweden

7.3.1.1 According to the records of the Ministry, Ms B Mthembu, the Personal Assistant to Minister Joemat-Pettersson at the time, addressed a letter to the Director: Legal Services in the Presidency on 7 December 2009, requesting permission from President Zuma for the Minister to undertake an official trip to Sweden from 20 to 23 December 2009. The purpose of the visit was stated as: *"to contribute towards strengthening bilateral relations and capacity building."*

7.3.1.2 On 10 December 2009, Minister Joemat-Pettersson personally addressed a letter to the President requesting permission to be on leave for the period 23 December 2009 to 6 January 2010. She stated in her correspondence that she would be responsible for her stay in Sweden during this period.

7.3.1.3 The Presidency confirmed the President's approval of Minister Joemat-Pettersson's leave of absence for the period 23 December 2009 to 6 January 2010 on 14 December 2009, and for the official trip on 17 December 2009.

7.3.2 The correspondence between the Ministry and the Department of International Relations and Cooperation.

7.3.2.1 In a letter dated 10 December 2009, addressed to the Director-General of the Department of International Relations and Cooperation (DIRCO) by the Senior State Accountant of the Department, the DIRCO was requested to make arrangements for Minister Joemat-Pettersson's visit to Sweden, accompanied by the then Chief of Staff, Ms B Bopape and the Minister's protector, Ms O Ockhuis-Maczali.

7.3.3 The travelling and accommodation of Ms Joemat-Pettersson in Sweden

7.3.3.1 The South African Embassy in Sweden made reservations for Minister Joemat-Pettersson, her children and an *au pair*, the Chief of Staff in the Ministry as well as her

protector to stay at *Hotel Tegnerlunden* in Stockholm where a suite and three rooms were reserved.

7.3.3.2 Further to the accommodation arrangements for Minister Joemat-Pettersson, a VIP Lounge at Arlanda Airport was reserved for use on 21 and 22 December 2009 as well as 5 January 2010, the expected date of her departure back to South Africa. For ground transport, the South African Embassy arranged *Freys Car Rental Company* to transport Minister Joemat-Pettersson at the Department's expense.

7.3.4 Official engagements of Ms Joemat-Pettersson in Sweden.

7.3.4.1 According to the *Back to Office Report* of the Chief of Staff prepared on the Minister's return from the trip, the following were the official engagements undertaken by Minister Joemat-Pettersson whilst in Sweden:

“Background and purpose of the visit

The Minister of Agriculture, Forestry and Fisheries accompanied by Ms Bafedile Bopape, Acting Chief of Staff visited the Kingdom of Sweden with the purpose of identifying agriculture, forestry and fisheries opportunities, facilitating future engagements and also to pick up on issues that might arise in the next Bi National Commission (BNC) to take place in South Africa in March 2010. The possible dates for the BNC are 21-23 March 2010.

Programme of the 21st – 22nd December 2009

Meeting with Honourable Minister of Agriculture Mr Eskil Erlandsson

The Minister of Agriculture in Sweden is responsible for the following functions:-

- *Agriculture and environmental issues relating to agriculture;*
- *Fisheries, reindeer breeding and horticulture;*
- *Rural development;*
- *Forestry.*

Issues discussed

Research on alternative energy

Forestry

Sweden is famous for energy/green energy. They have developed many types of equipment for small factories for the purpose of energy renewal and they want to share these benefits with other countries. Forestry sector is a resource for energy in Sweden, 98% of the energy is from Forestry.

Research is underway on how to use waste from agricultural products for energy renewal. A lot of Universities and other institutions in Sweden deal with this and can help South Africa. University of Agricultural Science has a division dealing mainly with bio-energy. Counsellor Furter of the South African Embassy in Sweden was asked to follow up on this with the University.

Agriculture

Not much was discussed on agricultural issues. It was reported that research on livestock has some synergy and 50% of the meat in Sweden is imported. Milk is self sufficient in Sweden. It was also indicated that production is the same but consumption has gone up.

Training opportunities for South African black farmers;

It was noted that there are many opportunities around the area of training, not necessarily for black farmers, but for our staff too, but the Department has not explored these opportunities fully. There are programmes in South Africa funded by the Swedish International Development Agency (SIDA) but only 3 people have been trained since 2007. There are training opportunities for farmers and the responsible Directors should explore this. Please note that the Minister is more interested in exploring for training black farmers than in markets because market opportunities in Sweden will benefit only already advantaged groups in South Africa.

Meeting with the Private Sector

Purpose of the meeting

To discuss possible continuation of the cheese project which was started in Vryburg few years ago and abandoned for various reasons? The purpose of this abandoned project was to develop a sustainable and ecological milk production of high quality and the establishment of a cheese factory mainly for export purposes in the European markets. The aim was to have a South African branded cheese, the concept similar to the South African wine.

It was noted that the Department was involved in this project to a certain extent.

Meeting with Honourable Minister for Enterprise and Energy and Deputy Prime Minister Ms Maud Olofsson.

The meeting did not take place due to the Deputy Prime Minister being sick.

Plan of Action

Review Swedish co-operation with SABNC;

Send a technical team around January/February to explore opportunities on bio-gas, bio-energy, training and markets;

Identify areas of training for black farmers;

Expert support from Sweden in terms of review of our legislation. It was noted that within the EU there is a catalogue of legislation that could assist us in the review of our legislation;

Explore the poultry opportunities in Sweden because consumption of chicken has gone up and supply is not sufficient;

Relock and review the cheese project and get possible funding for that in consultation with the Swedish private companies, exploring relations with big milk producers in Holland and Germany.

7.3.5 The technical visit by officials of the Department to Sweden and the Netherlands from 16 to 21 May 2010.

7.3.5.1 During the investigation it transpired from the records of the Department that a technical team visited Sweden and the Netherlands during the period 16 to 21 May 2010.

7.3.5.2 The technical team met and had discussions with representatives of an agricultural co-operative owned by Danish and Swedish dairy farmers, the Swedish Dairy Association, a private importer of dairy products, a dairy production plant, the Swedish Ministries of Agriculture, Enterprise, Energy and Communication and a Biogas and Bio-fertiliser plant.

7.3.6 The total expenditure incurred for the visit to Sweden

7.3.6.1 The records of *Travel With Flair* as well as the documents and invoices presented during the investigation by the South African Embassy in Sweden, indicate that the total expenditure incurred by Minister Joemat-Pettersson and company for their visit to Sweden including air travel, accommodation, car hire, chauffeur, and subsistence allowance, amounted to approximately R390 973.37 excluding the hotel accommodation and ground transport in Sweden, which was arranged for by the South African Embassy in Sweden.

7.3.6.2 The records also indicate that the Minister paid for the air travel and accommodation of her children and *au pair*, except for their return tickets which were changed, as indicated in her explanation above, from her private funds.

7.3.7 The return of Minister Joemat-Pettersson from Sweden to South Africa on 1 January 2010

7.3.7.1 According to the records of the Department and *Travel With Flair* and the information provided by former Chief of Staff, Ms B Bopape, Minister Joemat-Pettersson returned to South Africa on 1 January 2010. Ms Bopape stated during her interview that the Minister was recalled by the Presidency and that a meeting was held on her return on 2 January 2010 at the *Melrose Arch Hotel*.

7.3.7.2 No information on the reasons why Minister Joemat-Pettersson had to return to South Africa urgently on the 1st of January was initially provided by her during the investigation. The former Chief of Staff also could not be of assistance in this regard. The Presidency indicated that it does not have any information on record that the Minister was recalled and referred to enquiries made during the investigation to the Ministry.

7.3.8 The initial explanation provided by Minister Joemat-Pettersson during the investigation in connection with her visit to Sweden

7.3.8.1 In her response to the Public Protector, referred to in paragraph 7.2.4 above, Minister Joemat-Pettersson explained as follows in regard to her visit to Sweden from 20 December 2009 to 1 January 2010:

"I travelled to Sweden from 20 December 2009 to 1 January 2010. The trip combined an official visit with a period of personal leave. The official visit took place from my arrival on 21 December 2009 until 23 December 2009. Both the official visit and personal leave were approved by the President in line with the requirements of the Ministerial Handbook.

The purpose of the trip was to identify partnership opportunities in agriculture, forestry and fisheries, to facilitate future engagements, and to prepare for the Bi-National Commission with Sweden which was due to meet in South Africa in March 2010. In addition to the President's approval, the trip also had the support of the Department of International Relations and Co-operation.

I was at all times under the impression and of the view that the visit fell well within the requirements in the Ministerial Handbook for official travel abroad, and that this was supported by the fact of the President's prior approval.

An itinerary for the official portion of the trip was prepared by my office, in consultation with the South African Embassy in Stockholm. This included meetings with Mr Eskil Erlandsson (my counterpart, the Minister of Agriculture for Sweden), Mr Kjell Moller (former Executive Vice President of SAAB), Ms Maud Olofsson (the Deputy Prime Minister and Minister for Enterprise and Energy) and Ms Jessica Olausson (an official from the Ministry for Foreign Affairs).

Regrettably the meeting with the Deputy Prime Minister was cancelled at her request, due to illness. My two minor children accompanied me on the trip, due to the fact that it was school holidays and they could not be left alone at home. As noted, I had approval from the President to take a leave of absence as from 23rd December, during which time I would have been hosted by my late husband's family in Sweden, giving my children an opportunity to spend some time with our family.

It should also be stressed that the full cost of my two children and their au pair, including travel and accommodation, was borne by me as is required by the Ministerial Handbook. I paid for their air tickets and for their accommodation.

While I was in Sweden, on 28 December 2009, I was informed by the President that I had to return to South Africa on 3 January 2010. I accordingly changed the return date of our air tickets to depart Sweden on 2 January 2010, to arrive in South Africa on 3 January 2010 in order to meet with the President. This change incurred charges of R3 750, 00, which I paid. However, subsequent to this change, I was recalled urgently by the President, and instructed to depart Sweden by 1 January 2010, in order to meet with the Presidency. The existing tickets could, however, not be changed again (as I had done on 28 December) due to unavailability of seats on that particular class of tickets.

New tickets had, accordingly, to be issued. In the circumstances, and in order for me to comply with the President's request, I requested the Department to bear the costs of return travel for my children and their nanny on the earlier date of 1 January 2010.

The costs of the trip have been elaborated upon in the parliamentary reply, and amounted to R249 855.88 for the two officials and me. The tickets purchased for my children and their au pair to return on the earlier date of 1 January 2010 due to the exigencies of my urgent recall, amounted to an additional R151 878.76. This last-minute arrangement was not of my choice, and the costs incurred should be regarded as unavoidable in the circumstances. Finally you should note that the question asked by Mr J Bekker in the NCOP refers to SAAB AB as an “arms manufacturer”, and enquires whether I have met with other arms manufacturers.

The inference is that there were discussions about arms, which could not be further from the truth. SAAB AB is a major conglomerate with many interests. As indicated, my discussions were about energy, which is but one of these interests.” (emphasis added)

7.3.8.2 The letter of the Public Protector, dated 19 June 2012, requesting clarification, referred to in paragraph 7.2.4.7 above, and Minister Joemat-Pettersson’s response thereto on 6 July 2012, also included the following questions and answers:

Question: *“In your report addressed to me dated 6 February 2012 in connection with the trip, you stated that you were recalled urgently by the President and instructed to depart Sweden by 1 January 2010 in order to meet with the Presidency. In this regard kindly indicate:*

What was the reason provided to you for your urgent recall?”

Minister Joemat-Pettersson’s response:

“No reasons were provided by the Presidency for the urgent recall. The instruction came from an authorized official in the office of the Presidency.” (emphasis added)

Question: *“Who in the Presidency called you and who did you meet on your arrival on 2 January 2010?”*

Minister Joemat-Pettersson’s response:

“You may direct your query to the Presidency for further information.”

Question: *“Did you also meet with the President?”*

Minister Joemat-Pettersson’s response:

“I consider the information requested herein confidential. Kindly divert your query to the Presidency.”

Question: *“Where did the meeting take place and what was the purpose thereof?”*

Minister Joemat-Pettersson’s response:

“The meeting took place at Melrose Arch, Johannesburg. I consider the information regarding the purpose of the meeting to be confidential. The relevant issue for the purposes of your investigation is whether I was instructed by the Presidency to return. This fact I have confirmed. The reason for the instruction and the content of the consequent meeting is not, it is respectfully submitted, relevant to your investigation.”

Question: *“On receiving the urgent call to depart Sweden on 1 January 2010, did you advise the Presidency of the cost implications thereof?”*

Minister Joemat-Pettersson’s response:

“No. In any event I believed that I was duty bound to obey the instruction.”

Question: *“Kindly furnish me with reasons for your accommodation reservations at Intercontinental Hotel at the O R Tambo International Airport on 3 January 2010 whilst booked at Gallo Manor Country Lodge as well as reasons for non arrival at the hotel”.*

Minister Joemat-Pettersson's response:

“Gallo Manor Country Lodge was the place of my residency which was booked on a monthly basis.

A meeting room at the Intercontinental Hotel at O R Tambo International Airport was booked for meeting purposes. I did not check-in for the purposes of residence there. It is possible that there was an administrative error-which reflects that a booking was made for accommodation but that no occupancy took place. This would explain any entry indicating “non-arrival”.

7.3.9 The additional information provided by Minister Joemat-Pettersson in her statement of 23 August 2012 relating to her return from Sweden to South Africa in January 2010

7.3.9.1 In her statement, dated 23 August 2012, submitted to the Public Protector, Minister Joemat-Pettersson stated in this regard that:

“Although I was initially reluctant to reveal the nature of the President’s instruction to me, it is apparent that this has led to speculation as to whether the President would have insisted on my return.

...

*In these circumstances I feel that it would be appropriate to answer the query in more detail than I had originally done, without wishing to breach the relationship of trust with the Presidency. The reason for my early return related **mainly** to the fact that I needed to assist dignitaries and some VIP guests with regard to the importation of prescribed goods that they required during their stay in South Africa at the time. I was under pressure to expedite that matter.”(emphases added)*

7.3.9.2 That the assistance that had to be provided to “dignitaries” and “VIP guests” related to the wedding of the President that took place on 4 January 2010, appears from her contention that to speculate that “if I had raised the matter (of the costs of her early

return) *with the President, he would have agreed instead to my return after his wedding is entirely unfounded. It was not for me to question his order in this regard.*” (emphasis added)

7.3.9.3 As far as the additional costs for the Department in respect of her early return to South Africa is concerned, Minister Joemat-Pettersson concluded as follows:

“In any event, I followed correct procedure in having the return tickets for my children approved. At the time, upon enquiry, I was advised by my COSMIN that the department would carry the costs of the travel expenses.

....

It is perhaps relevant to note that I had paid for the return tickets for both my children and the au pair and I would have purchased new return tickets for all three if I was correctly advised by the COSMIN that the state was not supposed to pay as per the Ministerial Handbook. My children, their nanny and I have unlimited travel benefits at any time and place to any place worldwide which is paid for from the estate of my late husband. I mention this because the implication appears to be that I was attempting to have a family holiday at state expense. I would have no such motive considering my personal situation. I was advised by my COSMIN that the Department would and should carry the costs for their tickets. All the procedures required by the usual control measures were followed in relation to the return tickets by my COSMIN. This made me believe that my COSMIN’s actions and advice was correct.” (emphasis added)

7.3.9.4 Attached to Minister Joemat-Pettersson’s statement was a copy of an internal memorandum from Ms B Bopape, the former Chief of Staff of the Ministry, addressed to Ms G Van As, the Director: Facilities Management of the Department, dated 26 January 2010, titled: *“PAYMENT OF RETURN AIR TICKETS FOR MINISTER’S KIDS AND THE AU PAIR FROM SWEDEN ON 1 JANUARY 2010”*.

7.3.9.5 This Memorandum stated that:

-
- (a) Minister Joemat-Pettersson was informed by the President on 28 December 2009, that she must return to South Africa on 3 January 2010;
 - (b) Minister Joemat-Pettersson changed the return dates of the air tickets of her children and the *au pair* at her own cost;
 - (c) Subsequently, Minister Joemat-Pettersson was instructed by the President to depart Sweden on 1 January 2010 and to be in South Africa on 2 January 2010;
 - (d) It was established that no seats in the same booked class were available for 1 January 2010 as a result of which new tickets had to be issued;
 - (e) *“Therefore, as Minister was being recalled immediately for official purposes by the Honourable President, the Department had to ensure that Minister is in South Africa on 2 January 2010, hence the three tickets were paid for by the Department.”*
 - (f) Minister Joemat-Pettersson and her family arrived back in South Africa on 2 January 2010 and she met with *“the Presidency”* on the same day at the Melrose Arch Hotel.

7.3.9.6 Minister Joemat-Pettersson also presented the Public Protector with an affidavit by Ms R Ramanand, her Personal Assistant, signed on 17 August 2012, in which she stated that she made the reservations for the Minister’s children and their *au pair* to travel to Sweden and back. She confirmed the changes that had to be made on the return tickets to South Africa and stated that:

“When the COS, Ms Bopape, confirmed that the Dept will pay for the return tickets then I called the travel agent who issued the tickets”

7.3.9.7 Ms Ramanand concluded by stating that she was only assisting in the Ministry at that stage. *“All authorisations were done by Ms Bopape.”*

7.4 The appointment of Ms B S Bopape as the Chief of Staff

- 7.4.1 According to a letter addressed to Ms B S Bopape, who was the Chief Director: Planning and Monitoring of the Department at the time, dated 11 January 2010, and signed by the Acting Director-General, she was appointed as the Chief of Staff in the Ministry with effect from 1 December 2009.
- 7.4.2 Her appointment was made by means of a lateral transfer in terms of the Public Service Regulations, 2001.
- 7.4.3 According to the Performance Agreement entered into between Minister Joemat-Pettersson and Ms Bobape for the period 1 April 2010 to 31 March 2011, she was appointed at post level 15 (equal to that of a Deputy Director-General) at a salary notch of R976 317 per annum.
- 7.4.4 Her Job Purpose was determined by the Performance Contract as: *“To ensure the effective and efficient management of operations and information flow between the Ministry and the Department.”*
- 7.4.5 Ms Bopape’s job functions included the financial planning and management of the Ministry and ensuring *“implementation”* of the Ministerial Handbook.

7.5 The role and responsibilities of the Chief of Staff

- 7.5.1 Mr J Hlatshwayo, the Chief Financial Officer of the Department was interviewed in this regard during the investigation.
- 7.5.2 He confirmed that the Chief of Staff is responsible for the management of the expenditure of the Ministry.
- 7.5.3 According to Mr Hlatshwayo, all travelling and accommodation requisitions for the Minister are to be authorized by the Chief of Staff as the “accounting officer” in the Ministry.

7.5.4 It was noted from the requisition forms used by the Department at the time, that there is no provision for a signature by the Chief of Staff to approve expenditure in respect of the Ministry. The only provision is for the signature of a booking official.

7.5.5 The Chief Financial Officer stated that he had discussions with the officials of the Ministry when he noticed that forms were signed by the Secretary, Ms J Morebudi. However, he maintained that the Chief of Staff in the Ministry remains responsible for its expenditure.

8. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION.

8.1 Common cause

8.1.1 It is common cause that Minister Joemat-Pettersson was allocated an official residence in Cape Town in July 2009. Due to the renovations that had to be done at this residence, she moved to temporary alternative rented accommodation in September 2010, where she is still residing.

8.1.2 Minister Joemat-Pettersson was allocated a second official residence, in respect of which she has to pay monthly market related rent, in Pretoria and took occupation thereof on 6 October 2010.

8.1.3 It is also common cause that the inability of the Department of Public Works to provide Minister Joemat-Pettersson with suitable official residences at the time of her appointment, was the main reason why she had to utilise alternative accommodation in Pretoria and Cape Town for a prolonged period and at additional expense to the Department.

8.1.4 In terms of the provisions of the Ministerial Handbook, which are discussed in more detail below, Minister Joemat-Pettersson was entitled to stay in alternative accommodation in Cape Town and Pretoria during the period that she was awaiting the allocation of her official residences.

8.2 Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?

- 8.2.1 Table 2 above indicates that Minister Joemat-Pettersson was accommodated at the *28A On Oxford* guest house from 13 June 2010 to 11 July 2010 at a cost to the Department of R420 000.
- 8.2.2 It was established from the Manager of the said guest house, Mr P Roux, and documentation obtained during the investigation, that an enterprise called *Pure Toys One CC* hired all the accommodation at the guest house for the duration of the FIFA 2010 World Cup, which was held from 11 June 2010 to 11 July 2010. As a result, all reservations at the guest house during this period had to be made with *Pure Toys One CC*.
- 8.2.3 The normal rate at the time prior to the World Cup was R1450 per person. However, due to the World Cup, the rate charged by *Pure Toys* was R 5257 (VAT inclusive).
- 8.2.4 Observations made during a visit to the *28A On Oxford* guest house, as part of the investigation, confirmed that the rate of R1450 per person was reasonable taking into account the quality of the establishment and the service provided.
- 8.2.5 As also indicated in Table 2 above and confirmed by the records of the Department, Minister Joemat-Pettersson stayed at the *Hydro Executive Apartments* from 8 to 12 June 2010. She had to leave on the 12th due to the fact that the venue was already booked for the duration of the World Cup.
- 8.2.6 After staying for one night at the *Castello del Monte Hotel* in Pretoria, the Ministry reserved accommodation for her at the *28A On Oxford* guest house in Sandton. Her accommodation, which included her two children, an *au pair* and the protector, was reserved from 13 June 2010 to 11 July 2010.

- 8.2.7 E-mail records of the Ministry indicate that reservations were made for the Minister to stay at the *Hydro Executive Apartments* from 13 June 2010, but that it was cancelled as, according to the officials the Minister preferred to stay at the *28A On Oxford* guest house.
- 8.2.8 When an official of the Department raised concerns about the fact that the Minister's accommodation at the *28A On Oxford* guest house for the period 13 June 2010 to 11 July 2010 would amount to R420 000, he was overruled by the former Chief of Staff, Ms B Bopape, who insisted that the Minister be accommodated there and that the amount be paid by the Department.
- 8.2.9 There is no evidence that shows that the Minister communicated to her staff that she specifically wanted to stay at this guest house. The arrangements were all made on her behalf by the staff of the Ministry and approved by the Chief of Staff.
- 8.2.10 There is also no indication that the officials of the Ministry, and especially the former Chief of Staff, informed the Minister of the excessive cost of her accommodation during the period 13 June 2010 to 11 July 2010.
- 8.2.11 No evidence was presented or could be found during the investigation that Minister Joemat-Pettersson was made aware of the fact that the rate charged by the guest house was increased in respect of one person per room from R1450 to R 5257, due to the World Cup. Due to her previous experience of staying at the guest house and therefore having been aware of the quality of the rooms and service, it could not reasonably have been expected of her to have suspected that the rate would have raised as dramatically as it did, for the period of her stay from 13 June 2010 to 11 July 2010.
- 8.2.12 However, Minister Joemat-Pettersson conceded during the investigation that she was aware of the fact that the accommodation costs were inflated during the duration of the FIFA 2010 World Cup. Despite her knowledge in this regard, the fact that her accommodation involved three rooms and was for a period of a month, she did not make any enquiries from her staff as to the costs involved and the possibility of alternatives, if the cost was excessive.

- 8.2.13 As already indicated, the evidence show that the former Chief of Staff, Ms Bopape, was informed of the excessive expenditure and that she was compelled to have avoided same in terms of her responsibilities. No indication could be found during the investigation that Ms Bopape attempted in any manner to avoid the excessive expenditure of R420 000 paid for the accommodation of Minister Joemat-Pettersson at the 28A On Oxford guest house and that less expensive alternatives were considered by her.
- 8.2.14 It was also established from the investigation that reservations were made for Minister Joemat-Pettersson to stay at the 5 star *Peermont D' Oreale Grande Hotel* from 8 September 2009 in an Executive Suite at a rate of R3000 per night. However, as she was not satisfied with the Executive Suite, the hotel upgraded her accommodation to a Junior Suite at an additional cost of R5085 per night for a period of 35 nights, which amounted to R177 975.
- 8.2.15 According to the information obtained from the General Manager of Emperors Palace, which includes the *Peermont D' Oreale Grande Hotel*, the Minister was also not satisfied with the Junior Suite and was further upgraded to the Presidential Suite. This was done at no extra cost.
- 8.2.16 Minister Joemat-Pettersson indicated initially during the investigation that her office was investigating the reasons why the cost of her accommodation at the *Peermont D' Oreale Grande Hotel* increased from R 3000 to R 8085 per night. When she was asked to provide the outcome of the investigation, she confirmed that the increase in the room rate was as a result of the upgrading of her accommodation. No reasons for her request to be upgraded or to be provided with other accommodation were provided.
- 8.2.17 It was only when she was afforded a third opportunity to explain the reasons for the upgrade that the Minister indicated that she requested an additional room at the hotel for her son and his *au pair*, but was upgraded instead.
- 8.2.18 Minister Joemat-Pettersson's evidence that she instructed her staff to make reservations for her accommodation at guest houses as it "*was my preferred option, because it was often more appropriate when the children visited me over school holidays and weekends. I also understood the cost of accommodation at guest houses in general to be more reasonable than hotels*" is inconsistent with her stay at this 5 star

luxurious and expensive hotel from 8 September 2009 to 20 October 2009 at a cost of R306 975. As indicated by the Minister during the investigation, she was satisfied to stay at, for example the Aluane Town Lodge, Pretoria at a rate of just more than R1000 per night.

8.2.19 The *Peermont D' Oreale Grande Hotel* is a luxurious upmarket hotel, as is also evident from the rates that it charged. Due to the quality of the accommodation and service provided, Minister Joemat-Pettersson must have been aware of the fact that accommodation at this hotel was much more expensive than that of guest houses, if not excessive.

8.2.20 It was also noted during the investigation that the Executive Suite, the Junior Suite and the Presidential Suite consists of one bedroom only. The evidence of the Minister that it was not desirable for her, her children and their *au pair* to stay in one room is also inconsistent with her accepting the upgrade and staying in the more expensive suites for more than a month, without raising any query or objection.

8.2.21 No explanation was provided during the investigation as to why Minister Joemat-Pettersson stayed at the *Peermont D' Oreale Grande Hotel* for a prolonged period when her instructions to her staff were to make bookings for her at less expensive establishments and whilst she was obviously aware that the expense in respect of her stay was excessive.

8.2.22 The evidence and information obtained during the investigation therefore shows that Minister Joemat-Pettersson indeed incurred excessive expenditure for the Department as a result of her accommodation at the *Peermont D' Oreale Grande Hotel* from 16 September 2009 to 20 October 2009.

8.2.23 The question for the Public Protector to determine was whether such expenditure was so excessive to be unconscionable, thus transgressing the ethical standards set by Section 96 of the Constitution as well as the Executive Ethics Code.

8.3 Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?

8.3.1 It is clear from the evidence and information obtained from TWF and the Department during the investigation that Minister Joemat-Pettersson did not stay in hotels and guest houses in Cape Town after she was allocated an official residence there in July 2009.

8.3.2 At the time when she stayed at the 28A On Oxford guest house from 3 to 5 October 2010, the official residence allocated to her in Pretoria was being renovated for her occupation.

8.3.3 No evidence was presented or obtained that indicated that Minister Joemat-Pettersson stayed in expensive hotels in Cape Town and Gauteng at the expense of the Department after official residences were allocated to her and were ready for occupation.

8.4 Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?

8.4.1 Minister Joemat-Pettersson approached the Presidency on 7 and 10 December 2009, requesting permission to travel on official business to Sweden from 20 to 23 December 2009 and to take leave of absence while in Sweden from 23 December 2009 to 6 January 2010. Both requests were approved.

8.4.2 From the itineraries prepared for Minister Joemat-Pettersson's official visit, the evidence of the former Chief of Staff, the information provided by the South African Embassy in Sweden and the *Back to Office Report* of the Ministry, it was established that the purpose of Minister Joemat-Pettersson visit was to identify agriculture, forestry and fisheries opportunities and to facilitate future engagement in this regard.

8.4.3 She indeed met with the Swedish Ministers of Agriculture and of Enterprise and Energy and with representatives of the private sector. The planned meeting with the Deputy Prime Minister could not take place due to her being ill at the time. Subsequent to the return of the Minister, a technical team of the Department, headed by Dr M Visser, the

Chief Director: Agricultural Production visited Sweden in May 2010 to further engage the Swedish Ministries of Agriculture and of Enterprise, Energy and Communication.

- 8.4.4 The team also interacted with representatives of the private sector in the agriculture, dairy, biogas and bio-fertiliser industries.
- 8.4.5 This visit was part of the execution of the action plan of the Ministry that was prepared following the Minister's visit to Sweden in December 2009. It resulted in further interaction between agricultural and energy industries between the two countries, with a view of further engagement and development.
- 8.4.6 According to the records of the Department and TWF, Minister Joemat-Pettersson was accompanied on this trip by her two children and an *au pair*. The Minister paid for the air travel and the accommodation of the children and the *au pair*.
- 8.4.7 Minister Joemat-Pettersson indicated during the investigation that she was urgently recalled by the Presidency to meet with the President in South Africa on 3 January 2010. She accordingly made changes to the flight reservations that were booked for the 6th of January 2010 at a cost of R3750, which she paid.
- 8.4.8 However, subsequent to the changes made to the reservations, the Minister was informed that the President wanted her to return to South Africa urgently, and that she had to arrive by 2 January 2010.
- 8.4.9 Due to the unavailability of seats in the particular class of ticket, the reservations of Minister Joemat-Pettersson, her children and the *au pair*, could not be changed again. Under the circumstances, new tickets for a one way flight to South Africa had to be bought at a cost of R151 878. The Minister requested the Department to bear the costs as she regarded the circumstances as unavoidable.
- 8.4.10 When she was requested to explain the reasons for her early recall and to provide the details of the person at the Presidency who called her, she refused and referred to the Public Protector to the Presidency.
- 8.4.11 The Presidency could not provide any information in respect of Minister Joemat-Pettersson being recalled by the President. When enquiries were made in this regard

during the investigation, the Public Protector was referred to the Ministry of Minister Joemat-Pettersson.

8.4.12 No evidence of any emergency or crisis that warranted her early return was obtained or presented during the investigation. Incidentally, the 2nd of January 2010 was a Saturday and it was noted during the investigation that according to media reports, the President got married on Monday, 4 January 2010.

8.4.13 The investigation also had to deal with the lawfulness of using public funds to purchase air tickets for Minister Joemat-Pettersson's children and an *au pair* particularly because no legal instrument could be found authorizing the said expenditure.

8.4.14 As indicated below, the Ministerial Handbook provides that dependent children who accompany their parents on official visits aboard do so at the cost of the parents.

8.4.15 Minister Joemat-Pettersson stated during the investigation that she did not inform the Presidency that her return to South Africa on 1 January 2010, instead of 2 January 2010 (i.e. 24 hours earlier) would result in additional expenditure of R151 878, which she could not claim from the Department. She merely requested the Department to pay the additional costs as she reportedly regarded the matter as beyond her control.

8.4.16 It was only in her statement to the Public Protector, dated 23 August 2012, that Minister Joemat-Pettersson was willing to divulge to the Public Protector that she was recalled from Sweden by the President mainly to assist dignitaries and VIP guests (who were apparently on their way to attend the wedding of the President on 4 January 2010) in her capacity as Minister of Agriculture, with regard to the importation of prescribed goods that they required during their stay in South Africa.

8.4.17 In the said statement, Minister Joemat Pettersson also explained that she enquired from her Chief of Staff at the time as to whether the Department would pay for the additional costs in respect of the return flight tickets of her children and the *au pair*, which she confirmed. It also appears from an internal memorandum drafted by the Chief of Staff (Ms Bopape) that she approved the additional expenditure.

8.4.18 Minister Joemat-Pettersson also emphasised in her statement that she was in a financial position to afford and would have paid for the tickets of the children and the *au pair*, had she been advised to do so by the Chief of Staff.

8.4.19 The evidence and information obtained during the investigation indicate that Minister Joemat-Pettersson visited Sweden on official business from 20 to 23 December 2009. Her visit later resulted in further engagements between her department and government and private entities in Sweden. She originally paid for the return flight tickets of her children and the *au pair* who accompanied her. No indication was found during the investigation that the Minister could reasonable have foreseen when she left South Africa that she would be recalled by the President at short notice and that it would result in additional expenditure. She should have been advised by the Chief of Staff that the additional expenditure relating to the return flight tickets of her children and the *au pair* was not authorized by the Ministerial Handbook.

8.4.20 Minister Joemat-Pettersson therefore did not travel to Sweden for a Christmas holiday with her family in 2009 under false pretenses, as was suggested by the Complainant.

8.5 Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?

8.5.1 As indicated in Table 1 above, the records of the Department and TWF indicate that a number of reservations made for Minister Joemat-Pettersson were cancelled, which resulted in cancellation fees that had to be paid by the Department.

8.5.2 Reservations were also made for her in a guest house and hotels during periods when accommodation had already been booked for her elsewhere. It was noted that all the double bookings were made for accommodation in the Johannesburg/Pretoria area. The total expenditure that related to double bookings and cancellation fees amounted to R64 882.55

8.5.3 In her initial response to the Public Protector, before she was provided with the details contained in Table 1 above, Minister Joemat-Pettersson explained that the double bookings related directly to the fact that she was not allocated official residences when

she was appointed to the Cabinet and that double bookings sometimes occurred due to “*the nature of my work*”. She indicated that she might have been called to Cape Town by the President and had to leave accommodation behind in Johannesburg that was already reserved at a cost to the Department. She also referred to instances where she checked out from accommodation late in the day and then moved to another venue. The Department was then charged for that night, due to her late departure.

8.5.4 When she was provided with the particulars contained in Table 1, the Minister explained that it happened on occasion that she had to have official meetings in hotels during the time that she was accommodated elsewhere. Some of these meetings were held in hotel rooms, for reasons relating to the availability of meeting rooms and the appropriateness to meet in open places. Under the circumstances, the travel agent would be invoiced for “*accommodation*” although the room reflected was used for a meeting.

8.5.5 No evidence or information could be found during the investigation indicating that the explanations provided by Minister Joemat-Pettersson in respect of the double bookings that appear in the records of TWF and the Department, were not a true reflection of the reasons why it was made or why cancellations had to be made on occasion.

8.5.6 Under the circumstances, it cannot be concluded that Minister Joemat-Pettersson incurred fruitless and wasteful expenditure for the Department through double bookings for accommodation at expensive hotels.

9 THE LEGAL AND POLICY FRAMEWORK REGULATING ETHICAL CONDUCT BY MEMBERS OF THE EXECUTIVE

9.1 The Constitution

9.1.1 Section 96(1) of the Constitution provides that members of the Cabinet must act in accordance with a Code of Ethics prescribed by National Legislation.

9.1.2 In terms of section 96(2), members of the Cabinet may not:

“(a) *undertake any other paid work;*

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- (b) **act in any way that is inconsistent with their office**, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
 - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.” (emphasis added)

9.2 The Executive Ethics Code

9.2.1 The Executive Ethics Code made and issued in terms of the Executive Members’ Ethics Act, was published by the President on 28 July 2000 and amended on 7 February 2007.

9.2.2 The relevant provisions of the Code with which Cabinet Ministers must comply in performing their official responsibilities, provide as follows:

“General Standards:

2.1 Members of the Executive **must** to the satisfaction of the President-

- (a) perform their duties and exercise their powers diligently and honestly;
- (b) **fulfill all the obligations imposed upon them by the Constitution and law;**
- (c) **act in good faith and in the best interest of good governance, and**
- (d) **act in all respects in a manner that is consistent with the integrity of their office or the government.**

2.2 In deciding whether members complied with the provisions of clause (paragraph) 2.1 above, the President.... must take into account the promotion of an open, democratic and accountable government.

2.3 Members **may not**-

- (a) Deliberately or inadvertently mislead the President;

(b) act in a way that is inconsistent with their position;

(c) *using their position or any information entrusted to them, to enrich themselves or improperly benefit any other person;*

(d)

(e) *expose themselves to a situation involving the risk of a conflict between their official responsibilities and their private interests; ...* (emphasis added)

9.3 The Handbook for Members of the Executive and Presiding Officers (Ministerial Handbook)

9.3.1 The Ministerial Handbook that was applicable at all material times referred to in this report, was approved by the Cabinet on 7 February 2007.

9.3.2 It is “*a guideline for benefits and privileges, to which Members of the Executive, Presiding Officers and members of their families are entitled, **in the execution of their duties.***” (emphasis added)

9.3.3 The Preface of the Ministerial Handbook states that: “*Anything not mentioned **in these guidelines does not form part of the benefits, allowances and support services envisaged for Political Office Bearers.***” (emphasis added)

9.3.4 In terms of paragraph 7.1.2 of Chapter 3, the relevant department meets the **reasonable costs** of domestic travel and subsistence for official purposes. Members, their spouses and dependent children, who out of necessity cannot stay at home, are entitled to accommodation and subsistence at expense of the department, when the member is fulfilling official duties away from their ordinary places of residence.

9.3.5 In terms of paragraph 3.4 of Chapter 6, dependent children who accompany their parents on official visits abroad do so at the cost of the parents.

9.3.6 The Chief of Staff of the Ministry is, in terms of paragraph 2.1 of Chapter 8 of the Ministerial Handbook, in charge of the management of the Minister’s Private Office.

- 9.3.7 Annexure A to the Ministerial Handbook consists of guidelines in respect of official travel by Ministers. Paragraph 1.1 provides that a Minister should approach the President in writing two weeks in advance of a planned official visit abroad, to request approval for the intended visit and the appointment of an Acting Minister.
- 9.3.8 In terms of paragraph 1.2, the national interest and the availability of departmental funds must be taken into account in respect of the official travels of Ministers abroad.
- 9.3.9 Paragraph 1.3 provides that international visits should offer real value and benefit to the Republic of South Africa. The status and importance of the people met must be on par with that of the visiting member and have special merit.
- 9.3.10 Chapter 4 of the Handbook deals with the residences of Members of the Executive. Paragraph 3 provides that Members may occupy, for official purposes, one state owned residence, in the capital of their choice, free of charge.
- 9.3.11 In terms of paragraph 3.1.2, Members may occupy a second state owned residence in the other capital, for official purposes. In this event a market related rental is payable.
- 9.3.12 Paragraph 3.8 of the Handbook provides that the DPW is responsible for the general maintenance and renovations of state owned residences, in consultation with the occupants.

9.4 The Public Finance Management Act, 1999

- 9.4.1 In terms of section 38, the accounting officer of a department is, *inter alia*, responsible for the effective, efficient, economical and transparent use of resources of the department. He/she must take effective and appropriate steps against any official in the service of the department who contravenes or fails to comply with a provision of this Act or who makes or permits unauthorised, irregular or fruitless and wasteful expenditure.
- 9.4.2 An accounting officer may, in terms of section 44(1), delegate any of the powers entrusted to him/her in terms of this Act to an official of the department or instruct any official of the department to perform any of the duties assigned to the accounting officer.

- 9.4.3 Section 44(2) provides that a delegation or instruction to an official does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- 9.4.4 The responsibility of officials, other than the accounting officer, is provided for by section 45. It provides, *inter alia*, that an official of a department is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility. An official must take effective and appropriate steps to prevent, within his/her area of responsibility any unauthorised, irregular and fruitless and wasteful expenditure.
- 9.4.5 Section 81(2) provides that an official of a department to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct in that official wilfully or negligently fails to exercise that power or perform that duty.
- 9.4.6 Fruitless and wasteful expenditure is defined by section 1 as: *“expenditure which was made in vain and would have been avoided had reasonable care been exercised.”*

9.5 The Treasury Regulations issued in terms of the PFMA

- 9.5.1 Regulation 4.1.1 provides that:

“If an official is alleged to have committed financial misconduct, the accounting officer of the institution must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts and agreements applicable in the public service.

- 9.5.2 Losses or damages suffered by an institution because of an act committed or omitted by an official, must, in terms of Regulation 12.7.1, be recovered from such official, if that official is liable in law.

9.6 Report of the Public Protector on an investigation into allegations of a breach of the Executive Ethics Code by the Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka, MP, Report No: 11 of 2011/12

9.6.1 This report, entitled “*In the Extreme*” related to an investigation against the former Minister of Cooperative Governance and Traditional Affairs, the late Mr Shiceka, who was alleged to have incurred excessive expenditure in respect of travels and accommodation for the Department of Cooperative Governance and Traditional Affairs.

9.6.2 The Public Protector found, *inter alia*, that:

“The general standards determined by paragraph 2 of the Executive Ethics Code furthermore, require a Minister to act in good faith, in the best interest of good governance and in a manner that is not inconsistent with the integrity of his/her office or the government.” ...

*“Although the Ministerial Handbook provides that members of the Cabinet can be accommodated in any hotel during domestic official travels, it also requires of them to **act in good faith and in a manner that is consistent with their office. It is expected of Ministers to act responsibly and in an accountable manner, when expending public funds.** Even though Mr Shiceka is entitled to leave his accommodation arrangements to the administration of his office, he was expected to ensure that the provisions of the Ministerial Handbook were adhered to by his staff.”*

...

“By staying in one of the most expensive hotels during his official visits to Cape Town, repeatedly, before and after an official residence was allocated to him, and without requesting his Private Office to take steps to ensure that the expenditure incurred by the Department is reasonable and justifiable in terms of his responsibility to act in good faith and with integrity, Mr Shiceka violated the provisions of paragraph 2.3 of the Executive Ethics Code and section 96(2)(b) of the Constitution.” (emphasis added)

10 ANALYSIS OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION AND THE APPLICATION OF THE RELEVANT LEGAL FRAMEWORK

- 10.1 As indicated in the evaluation of the evidence and information obtained during the investigation, referred to in paragraph 8 above, it is common cause that Minister Joemat-Pettersson had to stay in alternative accommodation in Cape Town and Gauteng due to the inability of the Department of Public Works to allocate official residences to her timeously.
- 10.2 Due to the circumstances and in terms of paragraph 7.1.2 of Chapter 3 of the Ministerial Handbook, Minister Joemat Pettersson was entitled to alternative accommodation in Pretoria and Cape Town at the expense of the Department, until such time as she could occupy her allocated official residences.
- 10.3 However, the provisions of section 96(2) of the Constitution and the general standards of the Executive Ethics Code required of Minister Joemat-Pettersson to utilise the alternative accommodation at state expense in a manner that was not inconsistent with her office, that indicated good faith and integrity on her part and that was in the interest of good governance.
- 10.4 The evidence showed that Ms Joemat-Pettersson incurred excessive expenditure for the Department during her prolonged stay at the *Peermont D' Grande Hotel* from 8 September 2009 to 20 October 2009 at a cost of R306 975.
- 10.5 According to the evidence, Minister Joemat-Pettersson also incurred excessive expenditure for the Department when she stayed at the *28A On Oxford* guest house from 13 June 2010 to 11 July 2010 at a cost of R420 000.
- 10.6 No indication could be found in the evidence that Minister Joemat-Pettersson at any time prior to or during her stay at these establishments raised the incurring of the said excessive expenditure with her staff in order to be advised of the costs and the possibility of more reasonable alternatives, despite the fact that the evidence show that she should have been aware that it was probably extravagant.

- 10.7 In terms of the provisions of the Constitution and the Executive Ethics Code referred to in paragraph 10.3 above, it was expected of Minister Joemat-Pettersson to have ensured her accommodation at the expense of the Department complied with the ethical standard that she had to observe as a Member of the Executive.
- 10.8 The evidence relating to Minister Joemat-Pettersson's early return from Sweden in January 2010 indicates that she enquired from the Chief of Staff of the Ministry (Ms Bopape) as to whether the Department could pay for the return flight tickets of her children and their *au pair*. Ms Bopape confirmed that the Department would pay the costs, which amounted to R151 878.
- 10.9 Paragraph 3.4 of Chapter 6 of the Ministerial Handbook provides that dependent children that accompany parents on official visits abroad do so at the costs of their parents. The advice provided to Minister Joemat-Pettersson by the Chief of Staff in this regard was therefore inconsistent with the provisions of the Ministerial Handbook.
- 10.10 As the Chief of Staff of the Ministry of Agriculture, Forestry and Fisheries, Ms Bopape was, by virtue of the provisions of paragraph 2.1 of Chapter 8 of the Ministerial Handbook responsible for the management of the Minister's Private Office. In terms of her Performance Agreement, she was also responsible to ensure the implementation of the provisions of the Ministerial Handbook, which includes the Executive Ethics Code.
- 10.11 Ms Bopape was furthermore, in terms of section 44(1) read with section 45 of the PFMA, responsible for the effective, efficient, economical and transparent use of the financial resources of the Ministry and the Department.
- 10.12 The evidence show that Ms Bopape failed to avoid the excessive expenditure incurred in respect of Minister Joemat-Pettersson's accommodation at the *28A On Oxford* guest house during the period 13 June 2010 to 11 July 2010, despite the fact that she was alerted thereto by an official of the Department. She also failed to inform the Minister accordingly. Furthermore, Ms Bopape failed to provide Minister Joemat-Pettersson with correct advice in regard to the bearing of the costs of the return flight tickets of her children and their *au pair* from Sweden in January 2010.

10.13 Ms Bopape's conduct as referred to in paragraph 10.12 above was accordingly inconsistent with what was expected of her by the provisions of her Performance Agreement, the Ministerial Handbook and the PFMA.

10.14 The expenditure incurred by the Department in respect of the said return flight tickets was inconsistent with the provisions of the Ministerial Handbook and also made in vain. It would have been avoided if reasonable care had been taken by the Chief of Staff, Ms Bopape. The expenditure therefore constituted fruitless and wasteful expenditure, as contemplated by the provisions of section 1 of the PFMA

11 THE RESPONSES TO THE PROVISIONAL REPORT

11.1 THE COMPLAINANT'S RESPONSE TO THE PROVISIONAL REPORT

11.1.1 Dr Bosman responded to the contents of the Public Protector's Provisional Report on 4 October 2012. The gist of his response were the following:

11.1.1.1 Minister Joemat-Pettersson's explanation that she needed an extra room for her family at the time that she stayed at the *Peermont D' Oreal Hotel* (referred to in this report) is inconsistent with the evidence that the upgrade afforded to her by the hotel did not include more bedrooms;

11.1.1.2 *"As far as the Minister's explanation for double bookings is concerned, it is worrying that she resorted to hotel rooms for meetings while she has ample conference and meeting facilities in the official buildings housing her office and the Department of Agriculture in Pretoria."*

11.1.1.3 The expenditure incurred by Minister Joemat-Pettersson in respect of reservations of hotel facilities that were used for meetings was excessive and wasteful.

11.1.1.4 The timing of Minister Joemat-Pettersson's business trip to Sweden in December 2009 was controversial *"considering that government activities winds down at this time of the year."*

11.1.1.5 The nature of the discussions that Minister Joemat-Pettersson had during her business trip appears to fall strongly outside of her mandate;

11.1.1.6 *“It is questionable whether the Minister indeed met with her counterpart Mr Eskill Erlandsson, as correspondence between my office and Mr Erlandsson’s office to establish what issues were under discussion revealed inconclusive evidence of a meeting having taken place. Minister Erlandsson’s Protocol Officer, Catherina Ramel, actually knows nothing of the meeting and wanted information from us to arrange a meeting from when Minister Joemat-Pettersson does arrive in Sweden. (The e-mail correspondence in this regard is attached).”*

11.1.1.7 It is disconcerting that Minister Joemat-Pettersson met with Mr Kjel Moller, at the time the Executive Vice President of SAAB AB, at the time of her visit to Sweden.

“Saab AB is the arms manufacturer that sold 26 Gripen fighter planes to the South African government as part of the notorious Arms Deal.

...

It is highly irregular for a minister (sic) of Agriculture, Forestry and Fisheries to be engaging with an arms manufacturer, especially one that has such a chequered history in our country.”

11.1.1.8 The matter of whether Minister Joemat-Pettersson’s recall by the President from Sweden was urgent is questionable and three questions should be asked in this regard:

*“**Firstly**, where were the Heads of Department handling these issues and could they not assist (and if necessary get the Minister’s approval by e-mail or telephonically)? **Secondly**, were the costs of the air tickets incurred for the President’s personal gain and comfort to have dignitaries at his wedding? **Thirdly**, were these costs worth it (as the minister (sic) returned on a Saturday) which is a non-working day for the Department in any case?”*

11.1.1.9 The seriousness of the unacceptable amount of money wasted on Minister Joemat-Pettersson’s visit to Sweden requires more serious consequences for her in addition to having to repay the amount of the tickets of her children.

11.2 EVALUATION OF THE COMPLAINANT'S RESPONSE TO THE PROVISIONAL REPORT

11.2.1 Apart from the comments made by Dr Bosman relating to the accommodation expenditure incurred by Minister Joemat-Pettersson, he also questioned whether the nature of the discussions that she had during her official trip to Sweden in December 2009 fell under her mandate.

11.2.2 The only evidence that was presented in this regard during the investigation was that of Minister Joemat-Pettersson and Ms Bopape and the contents of the *Back to Office Report of the Chief of Staff* filed in the records of the Ministry on their return, the contents of which is not disputed by the Complainant.

11.2.3 According to Minister Joemat-Pettersson and the said report, the meetings held related to agricultural, forestry and fisheries issues as well as training opportunities for black farmers and the exploration of alternative sources of energy.

11.2.4 The email communication that Dr Bosman attached to his response was dated 23 November 2011 and 9 December 2011, respectively. It was addressed to Mr Henry Trotter, a Political Researcher of the Democratic Alliance by Ms Catharina Ramel, the Protocol Officer of the Rural Ministry in Sweden. Unfortunately, the requests sent to Ms Ramel were not included.

11.2.5 In her first response to Mr Trotter, Ms Ramel stated:

“Re your request for a meeting between Minister Erlandsson and Minister Joemat-Pettersson in December. Please inform on the travel schedule of your minister and we will arrange for a one-hour meeting.”

11.2.6 On 9 December 2011, Ms Ramel wrote to Mr Trotter:

“For the planning of Minister Erlandsson’s agenda, I would like to inform myself whether you have any further information of the travel schedule of Minister Joemat-Pettersson, when she plans for their bilateral talks.”

11.2.7 Ms Ramel clearly misunderstood Mr Trotter's enquiries to relate to a planned official visit by Minister Joemat-Pettersson to Sweden and not to her visit in December 2009. These email messages therefore do not support Dr Bosman's contention that Ms Ramel knew nothing of the meeting between Minister Joemat-Pettersson and Mr Erlandsson in December 2009.

11.2.8 As far as meeting with SAAB's former Executive Vice President is concerned, Minister Joemat-Pettersson explained that their discussions related to issues of energy and had nothing to do with the arms industry. No evidence to the contrary was presented or obtained during the investigation. However, it was established that SAAB is an international company that is involved in a number of industries, including armaments and energy.

11.2.9 Minister Joemat-Pettersson's evidence that she was recalled by the President whilst she was in Sweden is not in dispute. The questions raised by Dr Bosman as to the necessity and justification of the recall and the associated costs were not the focus of the investigation. Fact is, Minister Joemat-Pettersson was recalled from Sweden by the President and had to return to South Africa as instructed.

11.3 MINISTER JOEMAT-PETTERSSON'S RESPONSE TO THE PROVISIONAL REPORT

11.3.1 Much of what was stated in Minister Joemat-Pettersson's response, dated 5 October 2012, has already been canvassed in her evidence referred to above. She stated essentially the following in addition thereto:

11.3.1.1 The justification for the additional expenditure that she incurred at the *Peermont D' Oreal Hotel* was that she needed extra room for her family. If such justification is accepted as reasonable and she was entitled to family-sized accommodation, then a finding that the costs involved were excessive and that incurring it was unethical, would be irrational.

11.3.1.2 As far as her accommodation at the *28A On Oxford* guest house is concerned, there can be no basis for any finding that suggests a breach of ethics on her part in circumstances where she had no actual knowledge of the price, did not request the

establishment in question and had no reason to expect from the choice of establishment itself that it would be unusually expensive.

11.3.1.3 *“As a matter of policy and principle, it would be irrational and unreasonable to require of ministers to have knowledge of the actual price of every booking or purchase made or service procured on their behalf. The suggestion that ministers should involve themselves in this level of detail in the administration of their offices is incompatible with the reality of the demands on a minister’s time. It is certainly at odds with the practice and procedures that are in place regarding the making of travel arrangements, and regarding all other administrative arrangements done on behalf of ministers. The members of my staff are required to have knowledge of these matters and to ensure compliance with the correct procedures and standards in this regard. They are held accountable for the way in which they apply the relevant standards and procedures. I need to rely on them in this regard.”*

11.3.1.4 The costs incurred by the Department in respect of the return flight of Minister Joemat-Pettersson’s children and their *au pair* from Sweden when she was recalled by the President cannot be regarded as fruitless and wasteful expenditure. *“I returned as ordered, and fulfilled my official responsibilities as required. The expenditure was accordingly justified in the circumstances.”*

11.3.1.5 *“Further, I relied on the advice of my COSMIN, Ms B Bopape, whom....has misled me regarding the said costs. In the light of such misleading advise (sic) if any repayment is to be made, Ms Bopape must be held solely liable therefor.”*

11.4 EVALUATION OF MINISTER JOEMAT-PETTERSSON’S RESPONSE

11.4.1 It is not disputed that Minister Joemat-Pettersson was entitled to be accompanied by her children when she had to stay in alternative accommodation whilst she awaited the allocation to her of official residences in Pretoria and Cape Town.

11.4.2 However, the focus of the investigation was on the excessiveness of the costs of such accommodation in a number of instances and its impact on the required ethical standard that pertains to Members of the Executive. The mere fact that the Minister was entitled to accommodation did not mean that she was entitled to accommodation irrespective of

the costs. It is expected of Members of the Executive to act in a manner that is responsible, in good faith, with integrity and in the interest of good governance.

- 11.4.3 As already indicated above, it was noted that Minister Joemat-Pettersson was satisfied to have stayed at the *Aluane Town Lodge* in Pretoria on several occasions, including from 26 May 2009 to 26 June 2009 at a cost of R41 040. Her subsequent stay at the *Peermont D'Oreale Hotel* (which is also in Gauteng) from 16 September 2009 to 21 October 2009 at a cost of R289 351 was therefore clearly excessive and cannot be justified, merely on the basis that she was entitled to accommodation.
- 11.4.4 Although Minister Joemat-Pettersson's evidence that she was not informed by her staff of the costs of her stay at the *28A On Oxford* guest house is accepted, she also indicated during the investigation that she was aware of the fact that prices of accommodation at some establishments were inflated during the period of the World Cup.
- 11.4.5 No indication was found in the evidence that Minister Joemat-Pettersson at any time enquired into the costs of accommodating her, her children, their minder and her protector in a guest house in Sandton during the relevant period, and as to the consideration of possible alternatives. This was expected of her, if she was serious to concern herself with the prudent use of public funds, as she appeared to have been in some instances where she stayed in much more reasonably priced accommodation.
- 11.4.6 The argument that Ministers should just leave such matters in the hands of their staff who will then be held accountable, is inconsistent with the ethical requirements of acting in good faith, with integrity and in the best interests of good governance as contemplated by the Executive Ethics Code. Although it cannot reasonably be expected of a Minister to enquire into every accommodation booked for him or her, accommodation at an obviously luxurious and expensive hotel over a long period and in an upmarket guest house during a period when prices were inflated, clearly warranted some concern and action to prevent excessive expenditure for the state.
- 11.4.7 The expenditure incurred by the Department in respect of the return flights of Minister Joemat-Pettersson's children and their *au pair* from Sweden was irregular, as it is not provided for in the Ministerial Handbook. It also constituted fruitless and wasteful expenditure as contemplated by the PFMA, as it was made in vain and would have

been avoided, had reasonable care been taken by the Chief of Staff to ensure compliance.

11.4.8 Despite the misleading advice that Minister Joemat-Pettersson received from Ms Bopape regarding the payment by the Department for the return flights, the fact that the Minister took the risk of additional costs should she have to return earlier for official reasons, when she took her children and their *au pair* with her on an official visit to Sweden in December 2009, cannot be disregarded. It would not be proper and justified to expect of the Department or Ms Bopape to carry the burden of such risk under the circumstances where the expenditure was irregular and unlawful. It should also be noted in this regard that Minister Joemat-Pettersson stated during the investigation that she would have paid for the return tickets, had she been provided with the correct information by Ms Bopape.

11.5 MS B BOPAPE'S RESPONSE TO THE PROVISIONAL REPORT

11.5.1 The Office of the State Attorney submitted a response to the Provisional Report on behalf of Ms Bopape, the former Chief of Staff in the Ministry of Agriculture, Forestry and Fisheries, on 17 October.

11.5.2 The response was somewhat awkward as parts of it appeared to argue cases for and against Minister Joemat-Pettersson, whilst at the same time addressing Ms Bopape's version.

11.5.3 At the outset, the response challenged the investigation process followed by the Public Protector in two respects:

11.5.3.1 Firstly, it was argued that the investigation process was flawed as the Public Protector did not personally investigate the matters concerned, but relied on investigators in her office to do so. In this regard, the response stated that:

“By not disclosing that the Public Protector did not personally investigate the complaint and by using language which not only conceals this fact but actively creates the impression that she also participated in the investigation the Public Protector will mislead the unknowing President, and others who might read the final report.”

11.5.3.2 Secondly, the contention was that the issues investigated “cannot be resolved on paper and should have been referred for an oral hearing with the affected parties having a right to cross-examine and to call witnesses in rebuttal.”

11.5.4 Much of the response on the issues relevant to Ms Bopape had already been canvassed by her evidence, referred to above. The gist of the additional matters referred to in the response were the following:

11.5.4.1 As far as Minister Joemat-Pettersson’s accommodation at the 28A On Oxford guest house is concerned, it was stated that:

“It is not without trepidation that we point out that where the Minister and Ncube have implicated Bopape, Bopape’s version should be accepted. Ncube clearly confused facts. He said that the Ministry indicated that the Minister prefers Sandton because it was next to the children’s school. “

11.5.4.2 During 2009, and not 2010 when Minister Joemat-Pettersson stayed at the 28 A On Oxford guest house, she expressed preference to stay in Sandton because of its proximity to her children’s school. *“During 2010 St David’s (the school) location could not have been a factor in the Minister’s choice of accommodation, because her children now enrolled at a school which is in Cape Town.”*

11.5.4.3 As far as Ms Bopape’s responsibilities pertaining to bookings for Minister Joemat-Pettersson is concerned:

“The fact that Bopape was responsible for overall management does not mean that she should micromanage staff on a day-to-day basis. At the level of a Chief Director it is not her responsibility to monitor each and every booking that is made in her office or each step that has financial implications.”

11.5.4.4 In support of Ms Bopape’s denial that she was involved in the reservation made for Minister Joemat-Pettersson’s accommodation at the 28A On Oxford guest house, a copy of a “blank” internal booking form was attached. The apparent significance of the form is that it makes no provision for the Chief of Staff to approve the reservation, and therefore the associated expenditure.

11.5.4.5 It was further contended that:

“The Minister cannot be heard to say that she relied on Bopape’s advice and simply rely on the fact that Bopape has, as one of her duties, the implementation of the Ministerial Handbook. Firstly, as already pointed out the Handbook governs the conduct of Executive Members. Therefore, Ministers have the highest duty not to contravene the Handbook. Secondly, the responsibility of Bopape to implement the Handbook is generic in the sense that every employee of government cannot perform his/her duty in a manner that violates the Handbook, and must implement it whenever he/she performs any act which is partially or wholly related to the Handbook. For instance, Finance cannot authorise a payment which is inconsistent with the Handbook even if Bopape authorises it.”

11.5.4.6 Regarding the payment made by the Department in respect of the return flight of Minister Joemat-Pettersson’s children and their *au pair* from Sweden, it was denied that Ms Bopape advised the Minister. She only discussed the matter with Mr Ncube *“and they both agreed that it would be reasonable for the tickets to be paid for by the Department.”*

11.5.4.7 The response conceded that the expenditure incurred by the Department in respect of the children’s early return from Sweden was irregular. It further claimed that it was as such reported by Ms Bopape to the CFO.

11.5.4.8 In conclusion, it was conceded that *“Chiefs of Staff have the responsibilities of accounting officer with regard to their departments”*, but argued that they are in practice not responsible for travel arrangements and that the approval of expenditure was the responsibility of the CFO of the Department.

11.6 EVALUATION OF MS BOPAPE'S RESPONSE

- 11.6.1 The challenges posed by the response to the investigation process that was applied in this matter were clearly based on a misconception of the mandate, powers and functions of the Public Protector.
- 11.6.2 In terms of section 182(1) of the Constitution, the Public Protector has the power to investigate, to report on the findings of the investigation and to take the appropriate remedial action.
- 11.6.3 The mandate, powers and functions determined by section 182 of the Constitution and the Public Protector Act clearly prescribe a process that is inquisitorial (and not accusatorial) in nature.
- 11.6.4 Section 7(1)(b)(i) of the Public Protector Act provides that the format and procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case. In this investigation, the Public Protector decided to conduct an investigation in terms of the format and process as described in paragraph 6, above.
- 11.6.5 It should be noted that the prescribed inquisitorial process of an investigation by the Public Protector does not allow for *“the affected parties having a right to cross-examine and to call witnesses in rebuttal”* as argued in the response and would be the case in accusatorial proceedings, such as in a criminal court case.
- 11.6.6 Section 7(9) of the Public Protector Act provides that if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.
- 11.6.7 Ms Bopape was interviewed during the investigation, on more than one occasion, and was ultimately provided with a copy of the Provisional Report with an indication where she is implicated and that the Public Protector may have to make an adverse finding against her. She was afforded ample opportunity to respond to the contents of the

Provisional Report and the intended findings to be made against her, which she did in much detail, with the assistance of her legal representatives.

11.6.8 The Public Protector decided that the opportunities afforded to Ms Bopape to respond to the evidence implicating her was expedient under the circumstances and was under no obligation to hold an “oral hearing” as suggested by Ms Bopape’s response.

11.6.9 In addition, it should be noted that the evidence and information implicating Ms Bopape mainly related to the prescribed responsibilities of the position that she occupied, the records of the Department and the written information provided by Minister Joemat-Pettersson.

11.6.10 All complaints accepted by the Public Protector are investigated by him or her. In terms of the relevant regulatory framework, it is only the Public Protector that can conduct investigations in terms of section 182 of the Constitution, the Public Protector Act and the Executive Members’ Ethics Act.

11.6.11 However, in terms of section 3(1)(c) of the Public Protector Act, the Public Protector shall be assisted by such staff as may be necessary to enable him or her to perform his or her functions. Investigators appointed by the Public Protector in terms of this provision are therefore merely assisting the Public Protector in his or her investigation of the matter concerned.

11.6.12 As indicated in paragraph 6.2.2.1 above, the Public Protector was indeed personally involved in the investigation when she met with Minister Joemat-Pettersson in connection with the complaints lodged against her on two occasions.

11.6.13 This is also evident from the fact that the reports on the investigation were personally signed by the Public Protector only when she was satisfied that the investigation was properly conducted.

11.6.14 Under the circumstances, the suggestion that the Public Protector had to disclose that she did not personally investigate the complaint has no foundation.

11.6.15 It was noted that the response conceded that Ms Bopape, in her capacity of the Chief of Staff, effectively performed the functions of the accounting officer of the Ministry. The

evidence of the CFO that “all traveling and accommodation requisitions for the Minister are to be authorised by the Chief of Staff..” was also not disputed.

11.6.16 Although it is accepted that the Chief of Staff is not involved in the details of the accommodation arrangements for the Minister, he/she still remains accountable for the expenditure incurred.

11.6.17 Ms Bopape’s response challenged her involvement in the reservation that was made for Minister Joemat-Pettersson to stay at the 28A On Oxford guest house, merely on the basis that the internal reservation form (Transport Reservation Instruction Form) that was used did not provide for her signed approval. However, the response failed to explain why she did not change the format of the form when she became the Chief of Staff, to ensure that she approved the expenditure related to the travels and accommodation of the Minister, which was part of her responsibility and accountability. She basically allowed expenditure of such nature to be approved by officials who had no authority to do so, without doing anything about it.

11.6.18 Incidentally, it was noted that the blank form that was attached to the response states the following:

*“The Minister’s support staff (headed by the Chief of Staff in terms of the Ministerial Handbook) is **responsible and accountable to apply and monitor the utilisation of the benefits contained in the Ministerial Handbook**, issued by the Office of the President as well as any other parliamentary privileges.” (emphasis added)*

It was not explained in the response how Ms Bopape ensured that this directive was complied with in the case of Minister Joemat-Pettersson’s accommodation and travel arrangements, as she was compelled to do in her capacity as the Chief of Staff.

11.6.19 The argument raised in the response that the responsibility of the Chief of Staff to ensure the implementation of the provisions of the Ministerial Handbook “*is generic*”, is inconsistent with the provisions of paragraph 2.1 of Chapter 8 thereof, in terms of which the Chief of Staff is responsible for the overall management of the Minister’s office, which obviously include the management of travel and accommodation arrangements. It is not the responsibility of staff of the Department to manage such

arrangements, but merely to ensure administrative compliance and to process the payments associated with such arrangements.

11.6.20 In addition, Ms Bopape's job functions, as stipulated in her Performance Agreement, included ensuring the implementation of the provisions of the Ministerial Handbook.

11.6.21 It was also noted that the response did not dispute the evidence of Mr Ncube that he raised the excessive costs of the Minister's accommodation at the *28A On Oxford* guest house with Ms Bopape, that she refused to listen to him, persisted that the reservation had to be confirmed and that the amount be paid.

11.6.22 In his position as the Transport Officer of the Department, Mr Ncube's function is to ensure administrative compliance of reservation and transport arrangements. He has no authority to approve or disapprove the associated costs of the travels and accommodation of the Minister, which is the responsibility of the Chief of Staff.

11.6.23 The response furthermore confirmed that at the time when Minister Joemat-Pettersson stayed at the *28A On Oxford* guest house in 2010, the reason for her preference to stay in Sandton, i.e. to be close to her children's school, was not applicable anymore, as the children were placed in a school in Cape Town.

11.6.24 The response conceded that Minister Joemat-Pettersson called Ms Bopape from Sweden to inform her that she was returning earlier. The Minister's Personal Assistant, Ms Ramanand, subsequently called Ms Bopape to discuss the payment of the return flight tickets of the Minister's children with her. As a result of this call (according to the response), Ms Bopape approached Mr Ncube, to discuss the matter with him and they agreed that the Department should carry the said costs.

11.6.25 The response did not state what Ms Bopape did after she had the discussion with Mr Ncube. The only logical assumption would be that she informed Ms Ramanand accordingly and that the children's tickets were paid for by the Department. This was confirmed by the evidence of Ms Ramanand and Minister Joemat-Pettersson during the investigation. Ms Bopape's denial that she advised Minister Joemat-Pettersson that the Department would accept the said costs is therefore inconsistent with the overwhelming evidence to the contrary and cannot be accepted.

11.6.26 It also appeared from the Memorandum addressed by Ms Bopape to the Director: Facilities Management of the Department on 26 January 2010 that she held the view that under the particular circumstances, the Department had to carry the costs of the early return of Minister Joemat-Pettersson's children from Sweden and that she therefore approved the expenditure, in her capacity as the Chief of Staff. No reference was made in the Memorandum that the expenditure was irregular, as it was not warranted by the Ministerial Handbook.

11.7 THE RESPONSE OF THE ACTING DIRECTOR-GENERAL OF THE DEPARTMENT TO THE PROVISIONAL REPORT

11.7.1 The Acting Director-General of the Department responded to the contents of the Provisional Report on 4 October 2012 and in essence indicated that he considers the intended remedial action to be taken (which was the same as the remedial action to be taken in terms of this report) as reasonable, fair and acceptable under the circumstances.

12 FINDINGS

The findings of the Public Protector are that:

12.1 Did Minister Joemat-Pettersson violate the Executive Ethics Code by recklessly using public funds in occupying expensive accommodation at hotels and guest houses while she was awaiting the allocation of her official residences in Cape Town and Pretoria?

12.1.1 Minister Joemat-Pettersson did stay at the *28A On Oxford Guest House* from 13 June 2010 to 11 July 2010 at a total cost to the Department of R420 000. This was during the period when South Africa hosted the FIFA 2010 Soccer World Cup and accommodation costs were inflated. She also stayed at *Peermont D'Oreale Grande Hotel* at a cost to the Department of R8085 per night. Both amounts involved were unconscionably excessive.

12.1.2 The Minister's justification of the costs, i.e. that she needed extra room for her family is reasonable as she was entitled to family sized accommodation considering the length of time she spent in hotels and guest houses due to inconceivable tardiness of the Department of Public Works.

12.1.3 However, Minister Joemat-Pettersson's defence of ignorance of the costs involved, though accepted, is a cause for serious concern as she displayed a blank cheque attitude towards public funds. Her failure to concern herself with the prudent use of public funds in connection with her accommodation expenses in the said two instances failed to meet the requirements of paragraph 2 of the Executive Ethics Code read with Section 96(2) of the Constitution, which required of her to act in good faith, with integrity and in the best interest of good governance. Therefore, the conclusion that her conduct amounted to reckless use of public funds, was improper and unethical is accordingly justified.

12.2 Did Minister Joemat-Pettersson violate the Executive Ethics Code by staying in expensive hotels at state expense after the allocation of official residences to her?

12.2.1 No evidence could be found indicating that Minister Joemat-Pettersson stayed at expensive hotels and guest houses at the expense of her Department after official residences were allocated to her and were ready for occupation.

12.2.2 According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's bills for accommodation during this period were in fact for meetings in hotel rooms. If the costs were for accommodation, as invoiced, the amount would be excessive but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.

12.2.3 Therefore, the allegation that Minister Joemat-Pettersson stayed at expensive hotels at state expense after the allocation of her official residences is, accordingly not supported by the evidence obtained during the investigation and her conduct in this regard did not constitute a violation of the Executive Ethics Code.

12.3 Did Minister Joemat-Pettersson violate the Executive Ethics Code by undertaking a pretext official trip to Sweden, which was in fact a family holiday at state expense?

12.3.1 The information and evidence obtained during the investigation confirmed that the trip undertaken by Minister Joemat-Pettersson to Sweden in December 2009 was of an

official nature, during which she held official meetings on matters relevant to her portfolio. The trip was combined with a family holiday, which commenced at the end of the official trip on 23 December 2009, and was cut short when she was recalled by the Presidency and returned on 1 January 2010. Evidence further confirmed that the return trips of the Minister's children and *au pair* were paid for by the state in violation of the provisions of paragraph 3.4 of Chapter 6 of the Ministerial Handbook, in the amount of R151 878.

12.3.2 Minister Joemat-Pettersson's justification that she was advised by her Chief of Staff that the Department had to pay, is upheld. However, the fact that the Department was not supposed to incur such costs remains a reality and the amount paid constitutes fruitless and wasteful expenditure, was unlawful and an act of maladministration by the Department.

12.3.3 The former Chief of Staff of the Ministry, Ms B Bopape, provided Minister Joemat-Pettersson with incorrect advice in respect of the Department's responsibility to pay for the return air tickets of the Minister's children and *au pair* when she was recalled from Sweden in January 2010. Since Minister Joemat-Pettersson was not aware that she was being misled into accepting a benefit she was not entitled to, her conduct did not constitute a violation of the Executive Ethics Code

12.4 Did Minister Joemat-Pettersson violate the Executive Ethics Code by causing her Department to incur fruitless and wasteful expenditure through double bookings of accommodation at expensive hotels?

12.4.1 According to the information and evidence obtained during the investigation, Minister Joemat-Pettersson's costs for accommodation, which appeared to be double bookings, were in fact in respect of official meetings held in hotel rooms. If the costs were for accommodation, as invoiced, the amounts would be excessive, but having accepted evidence that the cost was for official meetings, the cost cannot be said to be unreasonable.

12.4.2 The allegation that Minister Joemat-Pettersson incurred fruitless and wasteful expenditure for the Department through double bookings of accommodation is

accordingly not upheld and her conduct did not constitute a violation of the Executive Ethics Code.

12.5 Did the Department, particularly the Chief of Staff in the Minister's private office, fail to meet the requirements of the Public Finance Management Act regarding prudent management of public finances in the manner in which hotel and travel accommodation for the Minister was handled?

12.5.1 The former Chief of Staff of the Ministry, Ms B Bopape, was at all material times relevant to this report, in terms of the provisions of the Ministerial Handbook, the conditions of her appointment and sections 44 or 45 of the PFMA, responsible for the management of the expenditure related to Minister Joemat-Pettersson's travels and accommodation. She was compelled by the provisions of the PFMA to manage the expenditure with care to ensure that the resources of the Department were used effectively, efficiently and economically.

12.5.2 The information and evidence obtained during the investigation indicates that the Department, in particular the former Chief of Staff of the Ministry, Ms B Bopape did not exercise the necessary due diligence and prudence in handling state finances as envisaged in the PFMA, pertaining to the travel and accommodation expenses of Minister Joemat-Pettersson.

12.5.3 In wrongly advising Minister Joemat-Pettersson that she was entitled to state paid return tickets for her children and *au pair* when she was not, Minister Joemat-Pettersson's Chief of Staff, Ms B Bopape, was reckless and accordingly acted in an improper manner. Her improper conduct resulted in fruitless, wasteful and unlawful expenditure, amounting to R151 878.

12.5.4 She also violated the bounds of reasonableness and the provisions of section 45 of the PFMA in her approach to the Minister's accommodation and travel costs, specifically in allowing the unconscionable expenditure of R420 000 to accommodate Minister Joemat-Pettersson at the 28 A On Oxford guest house for a month during the period 13 June 2010 to 11 July 2010. The Department's conduct, and specifically the conduct of the Chief of Staff, was accordingly improper and amounted to maladministration.

12.5.5 Ms Bopape was clearly reckless in regard to the expenditure of R420 000 incurred by the Department for Minister Joemat-Pettersson's accommodation. However, in her mitigation the fact that her relationship with Minister Joemat-Pettersson was new, the particular circumstances relating to the availability of reasonably priced accommodation during the duration of the World Cup and the gross incompetence of the DPW which caused anomalous circumstances in regard to the accommodation of the Minister and might have impaired her judgement, have to be taken into account.

13 REMEDIAL ACTION

The remedial action to be taken as envisaged by section 182(1)(c) of the Constitution, is the following:

13.1 The President to consider reprimanding Minister Joemat-Pettersson, for her violation of the Executive Ethics Code referred to in this report.

13.2 The Acting Director-General of the Department:

13.2.1 To take appropriate action to recover from Minister Joemat-Pettersson the amount of R 151 858 being the amount unlawfully incurred in respect of the return flights of her two children and their *au pair* from Sweden to South Africa in January 2010;

13.2.2 To take appropriate action in terms of section 38 of the PFMA and the Treasury Regulations against the former Chief of Staff of the Ministry, Ms B Bopape (who is still employed by the Department):

13.2.2.1 In respect of her failure to take reasonable care to avoid the fruitless and wasteful expenditure incurred by the Department pertaining to Minister Joemat-Pettersson's accommodation at the 28 A On Oxford guest house during the period 13 June 2010 and 11 July 2010; and

13.2.2.2 In respect of her failure to provide Minister Joemat-Pettersson with correct advice pertaining to the provisions of the Ministerial Handbook, which resulted in fruitless and wasteful expenditure for the Department; and

13.2.3 To conduct an audit of the controls and record keeping by the Ministry in respect of all expenditure incurred by the Minister relating to domestic and international travels and accommodation with a view to improve the relevant systems.

13.3 The Minister of Public Works to take urgent steps to:

13.3.1 Expedite the completion of the refurbishment of the official residence allocated to Minister Joemat-Pettersson in Cape Town; and

13.3.2 Identify the cause for the chronic delay in providing ministerial accommodation and rectify such cause with immediate effect.

13.4 The Secretary of the Cabinet to take urgent steps to ensure that the review of the Ministerial Handbook is finalised expeditiously and to consider incorporating guidelines which will improve the regulation of official trips by members of the executive to ensure that such trips are not combined and/or coincides with private holidays and/or leave of absence, save in exceptional circumstances, to be determined by the Cabinet.

13.5 The Director-General in the Department of the Presidency to consider taking appropriate steps to have the Prestige Accommodation Portfolio of Ministers removed from the DPW or to arrange for closer supervision of the allocation of official residences to Ministers by the Monitoring Unit in his Department.

14 MONITORING.

14.1 The Director-General in the Department of the Presidency to advise the Public Protector of action taken by the President within 60 days of receipt of this report.

14.2 The Director-General in the Presidency to advise the Public Protector within 12 months of the consideration and decisions taken in respect of the remedial action referred to in paragraph 13.5 above.

14.3 The Minister of Public Works to advise the Public Protector on the progress made with the refurbishment of the official residence allocated to Minister Joemat-Pettersson in Cape Town within 30 days from the date of this report.

- 14.4 The Acting Director-General of the Department to submit an action plan in respect of the implementation of the remedial action referred to in paragraph 13.2 above within 30 days of the date of this report.
- 14.5 The Acting Director-General of the Department to submit an implementation progress report to the Public Protector within 60 and 80 days of the date of this report.



ADV. D. N. MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

Date: 26 November 2012